



Guidance Note on the Principles of Natural Justice

The principle of “natural justice” is recognised at law and is given constitutional protection amounting to a constitutional right. The effect of this protection is to guarantee the basic fairness of procedures.

It is imported into the employment relationship, by implication or explicitly (where there are certain agreed procedures laid down between the employee, employer/management and the trade union). In simple terms, the principle means that the employer/management must apply fair procedures and act reasonably at all times, particularly with regard to a disciplinary investigation concerning the employee. This means that if a case has potential disciplinary consequences, including and up to dismissal, the employer must do the following:

- Present the full and all allegations whether oral/written against the employee.
- Afford the employee a right to representation if they so wish, be that with an agreed union or, a University colleague.
- Allow the employee to state his/her case, by way of reply.
- Hear the case being made by the employee.
- Only form a judgement after all the facts disclosed have been considered.

The principle of natural justice can extend further in appropriate circumstances, and for example:

- Giving the employee sufficient time to prepare for any hearing/meeting.
- Allowing him/her to call witnesses on their behalf and the right to be shown any relevant documentation or written accusations that the management have in their possession.

Failure by management to grasp the importance of procedural fairness in their handling of disciplinary issues can lead to the accusation that any subsequent decision is seriously defective and open to challenge either by way of appeal or through the Industrial Relations Institutions or Civil Courts.

These principles are more vital where the stakes are higher, for example, where dismissal is a potential outcome or where a final written warning is involved. Another simple way to consider the issue is to ask yourself if it were you being subjected to a disciplinary investigation by your employer, what rights would you like to see yourself exercise? In other words, put into practice the familiar maxim, *“Do unto others as you would have them do unto you.”*

Therefore, to put the principle another way, the employee is entitled to the following:

- To be presented with the entirety of the case - good, bad or indifferent - being made against them in writing where possible and in a timely fashion.
- To be afforded adequate time to consider those allegations.
- To be given an opportunity to reply to same.

- To have such representations heard in an impartial manner by the management (this could mean that the manager may not be the appropriate person if the allegation concerns matters between the parties personally involving this manager). For example, where the allegation is that the particular employee abused their manager personally, then the manager is not the person who should investigate the subsequent disciplinary enquiry. This flows from the simple maxim that says, *“Nobody should be a judge in their own case.”*

Managers, when confronted with complaints, would be well advised to seek advice from their Human Resources Department and to follow any established or written guidelines laid down between the employer and employee/trade union. [The Personnel handbook/website contains the relevant employment procedures] It does not matter if the employee concerned is not a member of any union; the principles of natural justice still apply. Therefore, they should still be afforded the rights of representation if they so wish, which could be a colleague or fellow worker or, again, a lawyer if the matter concerns a potential criminal matter. Do not rush to judgement. Take time to consider the case, be fully informed before a decision is made and resist any pressure to reach a quick decision. Employees can always be suspended on full pay and kept away from the place of employment while investigations are being carried out, where appropriate, suspension in these circumstances is purely precautionary.

Whilst the principles of “natural justice” are important, particularly at the end of a process such as dismissal, they are less critical in minor or trivial matters such as the first incidence of poor time keeping or the first incidence of absenteeism. These matters should technically be dealt with by way of counselling.

When management is moving towards any class of warning, they are well advised to follow all the principles of “natural justice” as outlined above. Applying these principles protect the management in the final analysis as it ensures the decision reached was the right and fair one in the circumstances and, therefore, it is much less likely to be challenged successfully in any arena – be it in the Industrial Relations Institutions to the Courts.