

KEY DECISIONS & KEY ROLES

FS10

Stage 2
Investigation

There are four key decisions to make when investigating misconduct:

- whether to conduct an investigation
- findings of fact
- misconduct findings, and
- outcomes (including sanctions).

After a decision is made to conduct an investigation, the other three decisions are made by either the **investigator** or the **decision maker**. It is likely that the decision maker will be the person who decided to conduct the investigation.

In general

It is better not to have a team of investigators or decision makers. Team decisions can be a problem if the decision is challenged. If case conferencing is used, one person should be responsible for the decision. [FS3]

Where relevant to your organisation, both the decision maker and the investigator (if internal) should be at least one level up in seniority to the most senior person subject to the investigation. This is to ensure that they are not biased toward, or threatened by, the respondent.

The decision maker

The decision maker should:

- set the terms of reference for the investigation (including defining the allegations) [FS11] [FS12]
- make misconduct findings [FS22], and
- decide on outcomes (including sanctions) [FS23].

The investigator and the decision maker should not be the same person. This is to help ensure that there is no apprehended bias in the final decision making process.

The decision maker should not be involved in conducting the investigation. They also should not be the person appointed to supervise the investigator.

Who is the decision maker?

Legislation, regulations or industrial instruments usually specify the person with the authority to impose disciplinary sanctions. This will dictate who performs the role of decision maker.

The decision maker is often the most senior person in the organisation (the principal officer). In some cases it may be a delegate.

For instance, the *Police Service Act 2003 (Tas)* gives the Commissioner of Police the power to take disciplinary action. The Commissioner has delegated this power for some actions.

At the University of Tasmania, the person with the power to take disciplinary action is set out in an industrial instrument. The decision maker's identity varies depending on the employee under investigation.

Skills and experience required

The decision maker should be familiar with administrative law principles. This includes, for example, that a delegate cannot be told to make a particular decision.

It is preferable if the decision maker has investigative skills, experience or training.

The investigator

The investigator should:

- write the investigation plan [FS17]
- conduct the investigation
- write the investigation report [FS21], and
- make findings of fact. [FS20]

The investigator may also assist the decision maker to write the terms of reference, although this is not common practice.

Conflicts of interest

Both the investigator and the decision maker should be impartial and independent. They should not have been involved in the alleged misconduct.

All investigators should make a conflict of interest declaration before starting the investigation. This can be a simple written and signed declaration that they have no perceived, potential or actual conflicts of interest, similar to that completed during selection panel procedures.

Familiarity with the respondent does not usually amount to a conflict of interest. Each situation should be judged on a case by case basis.

If anybody involved in the investigation has a conflict, it should be documented and dealt with immediately. [\[FS25\]](#)

The Integrity Commission is available for advice on this issue. Conflict of interest resources are available on the Commission's [website](#).

