

Workplace Investigations – Good Practice Checklist

An investigation may be needed following a grievance hearing or an alleged act of misconduct. The investigation is a crucial step to inform a grievance or disciplinary decision.

As a starting point, the investigating officer should be clear on the scope of what they are investigating whether it be following a grievance or appeal hearing or following an act or allegation of suspected misconduct.

1. Who should investigate?

Where possible, someone not previously involved in the matter should investigate.

If there is likely to be disciplinary action, a different person to the one investigating should chair any subsequent disciplinary hearing (if possible). There may also be an appeal so identify a potential appeal chair.

***Investigator:** Not implicated in the matter being investigated. No interest eg personal relationship*

***Disciplinary Chair:** Not involved in investigation or have any interest. Has investigation reports provided to them, chairs the disciplinary hearing and decides any disciplinary sanction*

***Appeal Chair:** Not involved in the disciplinary decision making or have any interest. Investigates the disciplinary or grievance procedure and decision making and may, re-investigate the initial matter*

It is useful to identify who will undertake these 3 roles at the outset so any involvement in the matter can be kept appropriate to their roles. It may be difficult to separate these roles in a smaller business – it may be one person takes more than one role, or you could utilise a non-executive director or business consultant eg business coach, HR consultant.

2. Timing

You should investigate the matter as soon as possible, whilst it is still fresh in peoples' minds and supporting evidence is available.

There is no need to give prior warning of an investigation meeting. Sometimes a robust investigation requires no notice to ensure there is no opportunity to collude with other people or alter investigation evidence.

Where there is no risk of this, it may be useful to give some prior warning and an outline of the areas to be investigated so the employee can gather notes and prepare.

3. Accompanied or not?

There is no right for an employee to be accompanied at an investigation meeting. The meeting is for fact finding only. However, sometimes it can aid a conducive meeting to allow a companion. A companion may also be a reasonable adjustment for an employee with a disability.

4. Order of investigation meetings

Consider the order of who you see and when. If there is a risk to the business you may need to suspend some people, so where possible investigate these individuals early on to establish where a suspension is appropriate. (Be sure to follow a robust suspension procedure if there is the need to suspend an employee)

You may be able to anticipate whether your investigations will reveal further witnesses to interview. Whilst you can call people back for further investigation meetings, in order to make your investigations efficient and effective, schedule your meetings in a sequence to be able to fully investigate matters and arising evidence with appropriate parties.

5. No assumptions

Whilst on the face of it, the position may look clear to you; the starting point of any investigation should not be accusatory but enquiring to establish facts.

Present evidence and ask for the employee's understanding from their perspective of what happened.

6. Depth of investigation

There is no need spend excessive time and resources to investigate, but your investigation should be thorough and robust – interviewing identified witnesses and reviewing appropriate evidence (eg documentations) that you are made aware of in the investigation.

7. Investigation preparation

- Have copies of relevant policies and procedures
- Have to hand any evidence you wish to refer to
- Write out the questions you want to ask and prepare a meeting script (outlining meeting purpose, your role, what you are investigating)

8. What to ask

Ensure to keep within the scope of the investigation and not be pulled in to separate matters. If necessary instigate a separate procedure.

- Aim to understand from each employee's perspective what happened.
- Aim to find a reasonable explanation for why something was done
- Establish what each person in the investigation saw or did
- Ask for specific examples
- Ask whether there were any witnesses
- Ask whether there is any evidence eg emails or other documentation

- Establish an employee's knowledge of procedures (or lack of)
- Challenge versions of events where witnesses/evidence gives a different account
- Probe further if you get incomplete answers

After each question summarise the employee's answers back to them to demonstrate what you have understood from them and give the opportunity for them to clarify any points.

Take notes of the meeting. It is useful to have a notetaker present so the investigator can concentrate fully on the meeting itself. Share a copy of the notes with the employee and ask them to confirm they are an accurate reflection of the meeting (they do not need to be a verbatim account).

Advise the employee that they may need to attend another meeting, depending on what is established during the remaining investigation.

Tell the employee that it is expected that the content of the investigation meeting is kept confidential. This is crucial as part of an ongoing investigation where there is a risk of subsequent investigations being impacted by sharing confidential information.

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