

## INVEST EAST YORKSHIRE

# Carrying out a disciplinary and grievance investigation

### Introduction

When an employee does something wrong and you are facing instigating disciplinary proceedings or they have made a complaint about something relating to the workplace, i.e. a grievance it can seem daunting about where to start.

The first stage in both these situations is to carry out an impartial investigation. This is where you try and find out what has happened and gather all the facts of the case. It is important not to rush this stage and jump straight to the hearing. Throughout any investigation, whether connected to a disciplinary or grievance, it's important that the investigating officer remains impartial, not skipping to any conclusions or making judgements and focuses on the facts of the case, the evidence and corroborating witness statements.

In most cases the reason why most employment tribunal claims are found in favour of the claimant (employee) is down to procedural failings. This could be due to:

- Not following your company procedure
- Not carrying out a reasonable investigation
- Not being fair and objective

A flawed investigation can also lead to reputational damage and strained relationships within the team.

### Carrying out an investigation

The role of an investigator is to carry out a fair and objective collection and presentation of the facts of the case. In the case of a disciplinary situation their role is not to determine evidence that supports the allegation but to establish whether there is a case to answer. All the evidence gathered should be balanced to ensure a fair process.

Before starting any investigation, consider the following:

- Where possible appoint a case manager who acts as an intermediary – they will impartially advise both the employee and investigating manager. This is particularly important if the employee is suspended and unable to gather relevant evidence, a case manager can signpost the investigating manager to evidence that the employee wants to prepare their case
- Try and ensure you use separate people for the investigation and formal

proceedings, ACAS code of practice states that in misconduct cases, where practicable a different person should carry out the investigation and the disciplinary hearing.

However, in a grievance process you can use the same person to conduct the hearing and carry out the investigation.

- Approach any investigation in a non-judgemental manner. You are not trying to prove guilt so try to be balanced and seek evidence from all perspectives relating to the case.
- Train your managers on how to conduct investigations and if you have someone in HR in your business, they should be able to coach and guide the manager on best practise.
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Consider the following guidelines to ensure you handle investigations properly.

### **Planning and executing an investigation**

The first step is to establish the need for an investigation and determine the potential risks of not investigating. In the case of a potential disciplinary you also should consider whether suspension is necessary (only if absolutely essential and proportionate).

### **Plan your investigation**

It is a good idea to plan your investigation, identifying the documents, evidence and people that you want to interview. This enables you to outline what needs to be investigated and define the scope. This is sometimes referred to as Terms of Reference (TOR). This keeps the investigation focused and avoids bias by concentrating on the allegation(s) and only gathering relevant information to establish the facts, rather than being drawn into tangents. This doesn't mean however, that you should not investigate new lines of enquiry as they arise from your investigations.

Your plan will identify the key witnesses, evidence required and set realistic timelines for completing the investigation.

An example plan is provided at the end of this resource for you to utilise should you need to.

A well planned and well executed investigation will ensure employers have followed a fair procedure and any action taken is based on sound evidence.

### **Gather the evidence**

Collecting evidence is a crucial step in reaching an informed decision. The goal is to establish facts rather than opinions.

- Don't just rely on witness statements; any other crucial evidence could be overlooked e.g. clocking in records, emails, CCTV footage, documents such as quality-checks etc. Screenshots from electronic messages in any form such as WhatsApp or Messenger can also be used. Ideally you should be gathering more than one piece of evidence to prove or disprove the allegation.
- Interview and gather evidence promptly. A simple case could be handled within a matter of days, whereas a something more complex may take more time to investigate properly.
- You can interview the employee under investigation and any witnesses can also be interviewed. Don't be afraid to undertake another round of interviews if more evidence comes to light. There is no statutory right to be accompanied by during an investigation meeting however, there may be some instances where you will allow it.
- You need to identify what needs to be established from each interviewee and

prepare accordingly.

- Ask open questions **NOT** leading ones. You should be encouraging the witnesses to recall the event in their own words.
- Take full notes and avoid summarising what you think you have heard. It's often helpful to either have a notetaker present or record the interview so there is no discrepancy or misinterpretation about what is said.
- Your interviewees should read through your notes and sign and date them. If you type them up you should get your interviewees to read, sign and date them. Keep all your draft notes and typed versions
- Advise witnesses that if the investigation results in a disciplinary hearing their statements will be used and they may be called to give evidence in a hearing, including being asked questions by the employee concerned
- In serious cases, e.g. fraud, drug-dealing, sexual assault etc. you may need to inform other agencies such as HSE or the Police. It's best to seek legal advice at this point.
- Handling investigations with discretion is essential. Information should only be shared with those who need to know. Evidence should be securely stored, and we must ensure compliance with data protection laws. Employees should feel reassured that their concerns are taken seriously and handled professionally.

### Investigating a grievance

A grievance investigation allows us to understand the concerns raised by an employee and determine whether any action is needed. A failure to investigate properly can lead to tribunal claims, workplace tensions, and damage to your company's reputation. Grievance investigation is slightly different from one relating to a disciplinary process as the separation between aspects in the process differs. It is entirely normal for the same person to carry out the grievance hearing and the investigation, and in that order. It is usual to have the grievance meeting first to establish clearly the nature of the complaint and then conduct the investigation.

Grievance investigations should follow the same principles above and be objective and fair in collating and reviewing the evidence resulting from the investigation to arrive at a conclusion. In addition, it is also a normal part of the investigation to ask the employee raising the complaint or concern, how they would like it to be resolved and what a satisfactory outcome looks like for them.

### Analyse findings and prepare report

Once all evidence has been collected, it needs to be reviewed objectively. The investigation report should provide a factual summary of the investigation, highlight any inconsistencies in evidence, and outline any policy breaches. Recommendations should be made based on the findings, such as whether disciplinary action is necessary.

In a grievance investigation report, again provide a factual summary without personal opinions or assumptions and highlight any inconsistencies or key points in the evidence. The main purpose is to make recommendations based on findings, such as mediation, policy updates, or further action and ascertain if any of the issues raised have been upheld or not.

The report should include:

#### 1. Introduction

- Purpose of the investigation (e.g., disciplinary or grievance case)
- Investigator's name and role
- Date the investigation started and concluded
- Summary of the allegation or complaint

## 2. Scope of the Investigation

- What was investigated
- Any limitations encountered (e.g., unavailable witnesses or missing documents)
- The approach taken (e.g., interviews, document reviews)

## 3. Evidence Gathered

- Summary of witness statements (with anonymisation if necessary)
- Copies or descriptions of relevant documents (emails, reports, policies, etc.)
- Any physical evidence (e.g., CCTV footage, performance records)

## 4. Findings

- A factual account of what was discovered
- Any inconsistencies or contradictions in the evidence
- Identification of any policy breaches or procedural concerns

## 5. Conclusion and Recommendations

- Whether there is sufficient evidence to support the allegation or grievance
- Possible next steps (e.g., formal disciplinary hearing, mediation, no further action)
- Any suggested improvements to policies or procedures

## 6. Appendices

- Full copies of witness statements (these can be anonymised to protect confidentiality and potential backlash)
- Supporting documents referenced in the report

### Key points to ensure success

In summary the key points of carrying out an effective investigation are as follows:

- Train managers to undertake investigations.
- Those conducting disciplinary investigations should not be involved in the decision-making at any time.
- Investigations should be carried out with an open mind and decide in advance what you need. If you decide to interview the employee concerned make it clear this is not part of the disciplinary hearing.
- Remember as the investigator your role is to consider whether there is enough evidence of a satisfactory standard to pursue disciplinary proceedings or to see if a grievance complaint is upheld or not.
- If you suspect a criminal offence has been committed or a significant H&S breach inform the relevant investigatory body on notice straight away.

### An Example Investigation Plan

<b>Name of Investigator</b>	
<b>Terms of Reference</b>	These are the objectives of the investigation, e.g. to investigate the allegation against John Smith of stealing stock (laptop and iPad) from XYZ warehouse on 1 <sup>st</sup> July.
<b>Timeline</b>	A timeline of events can be useful to enable the investigator to follow the key events e.g. when did the allegation happen, when was it uncovered
<b>Evidence to Collect</b>	The evidence you need to collect <ul style="list-style-type: none"> <li>• Stop and search records of XYZ warehouse</li> <li>• Witness statement of security officer</li> <li>• Witness statement of John Smith's manager who had given permission to take the items</li> <li>• CCTV of John Smith prior to the alleged incident</li> </ul>
<b>People to Interview</b>	<ul style="list-style-type: none"> <li>• John Smith</li> <li>• John Smith's manager</li> <li>• Security Officer</li> </ul>
<b>Policies and Procedures to follow</b>	<ul style="list-style-type: none"> <li>• Company disciplinary procedure</li> <li>• Company security policy including Stop and Search procedure</li> <li>• Standard operating procedure on use of company equipment</li> </ul>
<b>Time frame to complete investigation</b>	Information on when the investigation commenced and when it should be completed
<b>Issues that need to be clarified</b>	<ul style="list-style-type: none"> <li>• Did John Smith take the items believing he had permission to do so?</li> <li>• What are John Smith's reasons to believe he had permission to take items</li> </ul>
<b>Investigation meetings to be arranged</b>	Include who, when and where interviews need to be undertaken
<b>Persons supplying evidence</b>	Any individuals who are supplying further evidence e.g. individuals external to the company
<b>Other factors to take into account</b>	<ul style="list-style-type: none"> <li>• John Smith's manager away on annual leave for 3 weeks commencing 1<sup>st</sup> July</li> <li>• John Smith currently suspended</li> </ul>

The Information in this document is correct as of 1st March 2025. It has been written as a helpful guide, but does NOT replace legal or HR expertise.

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