

Workplace Investigations

Organisations are regularly faced with grievances or allegations of wrongdoing that need prompt and thorough investigation. Getting it wrong can result in costly claims and damage to an organisation's reputation.



Here are our key points to consider for employers conducting investigations as part of a formal HR process:

1 Policy and procedure

Identify (and be clear about) the HR policy and procedure you are following (especially if there are potential overlaps). For example, if an employee raises a grievance which deals with wider regulatory matters, will this be dealt with under your grievance and/or whistleblowing procedure? Ensure that policies and procedures are applied fairly and consistently.

2 Appoint an appropriate investigator

Ensure independent investigators with sufficient expertise, training and experience are appointed. An investigator will typically be of certain seniority. Always consider whether an external investor (such as a law firm) might be more appropriate, especially where the subject matter is particularly sensitive and/or involves senior level employees.

3 Scoping and framework

Set out a clear scope and framework for the investigation. In particular give thought to the allegations/matters being investigated, what format the findings should take, and whether the investigator is to make any recommendations to the decision maker. Individuals involved in investigations should clearly understand their role and remit. However, remember things can change and the scope and framework might need to be updated.

4 Confidentiality

Ensure matters are dealt with as confidentially as possible. Only share matters to those who need to know and consider whether information can be shared in a more limited way (for example, just providing relevant extracts of documents rather than the whole thing).

5 General factors

For employers to remember and relay as applicable:

- ▶ interrogate the evidence and always look for corroboration
- ▶ understand the burden of proof to be applied ("*case to answer*" for investigations and "*balance of probabilities*" for hearings and decisions)
- ▶ ensure decisions are made on facts and evidence and not speculation
- ▶ keep careful paper trails and accurate notes
- ▶ make sure everyone is aware that drafts of the investigation report could become disclosable in legal proceedings. The language and the tone of the report and any recommendations should also be appropriate
- ▶ if an investigation touches upon criminal or regulatory matters, consider whether there is any need to make an external report

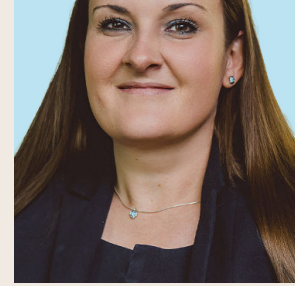
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