



Clover HR

EMPLOYER GUIDE

CARRYING OUT INVESTIGATIONS





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WHAT IS AN INVESTIGATION?

Investigations are needed where there is a workplace disciplinary or grievance issue, an investigation allows employers to obtain all the information they can about the issue.

Investigations are covered by the ACAS Code of Practice which is the minimum an employer should follow when handling issues in the workplace.

Employers who do not carry out a reasonable investigation with an issue, are likely to have their decisions deemed as unfair, which could result in legal action being taken against them. Employment Tribunals look to see if employers have followed the ACAS code of practice in a fair manner.

Investigations are used to:

- See if there is a case or issue to resolve and answer.
- Ensure people are treated fairly.
- Obtain evidence from all parties.
- Assist an employer as to what should happen next.

During an investigation, an employer can assess whether a formal process is required or if the issue can be resolved at an informal level.

Investigations should be started as soon as possible to ensure that the employee is treated fairly, people tend to remember situations as soon as they happen rather than having to think back.

It is best practice for all issues to be investigated in the workplace, formal grievances must be submitted in writing and therefore have to be investigated, however other issues that may arise may not be formally in writing, but employers must look into these and decide whether an investigation is required.

Some issues will be able to be resolved without the need for a full investigation, however this will depend on the nature of the issue.





WHO SHOULD CARRY OUT INVESTIGATIONS?

Ideally investigations should be carried out by someone who is not involved in the case, but in smaller businesses this may not always be possible.

In disciplinary cases, a different person should be used for each stage, the investigation hearing, the disciplinary hearing, and the appeal hearing. Ideally the person who hears the disciplinary hearing should be more senior to the person who conducted the investigation and likewise the appeal hearing should be heard by someone more senior to the disciplinary if possible.

However, with grievance investigations it is best practice for the person who is hearing the grievance to carry out the investigation into the issue.

During the investigation process the person investigating may need to get information regarding the issue from:

- ✘ The employee concerned.
- ✘ Any witnesses, these can include other employees, customers, or clients.
- ✘ Any relevant documentation, time cards for example.



TELLING THE EMPLOYEE

As soon as an employer decides they are going to investigate an issue, they must inform the employee what the disciplinary issue or grievance issue is about. However, if there is a high risk that the individual may influence witnesses or tamper with any evidence, then they can wait to inform them of the investigation.

WHEN INFORMING AN EMPLOYEE, THEY WILL NEED TO HAVE THE FOLLOWING EXPLAINED TO THEM:

- Why there is an investigation being done.
- Who will be chairing the investigation?
- How long it could take.
- What will happen after the investigation?
- Everything is to remain confidential.
- Witnesses may need to be spoken to.

IN ANY INVESTIGATION PROCESS, THE PERSON CHAIRING THE INVESTIGATION MUST ENSURE THEY ARE:

- Fair and objective.
- Follow the company procedure.
- Obtain as much information regarding the issue as they can.
- Get balanced evidence of the case from all parties.
- Keep all information of the case confidential.

IS SUSPENSION NEEDED WHEN INVESTIGATING?

During an investigation process an employee may be suspended from their job. Suspension may be required if the employer believes that it is needed to protect:

- The employee being investigated.
- Other employees in the workplace.
- The validity of the investigation.

An investigation process needs to be fair and concise, but also should be completed as soon as possible, enabling the suspension to not last longer than is necessary. Any period of suspension is paid at full pay. Any employee who is suspended must be informed of their suspension in writing and made aware that the suspension is not a sanction but is to allow a full and fair investigation to take place.





WITNESSES

Any witnesses called in an investigation can be giving vital evidence that could determine the outcome of the disciplinary or grievance case.

The investigating manager could ask a witness to write down their version of events, which would be known as a witness statement, or they can hold a meeting with the witness to ask them specific questions on the issues, with someone else taking notes of what is said.

Whichever option is done, the witness should be asked to sign the notes or their statement, to declare that what has been recorded is a true version of events.

A witness statement would usually be done if the witness was:

- ✿ not an employee of the company, e.g. a client or customer,
- ✿ only providing simple information
- ✿ ill and unable to attend a meeting





THE PROCESS AND HOW LONG IT TAKES

Investigations need to be done and completed as soon as reasonably possible, however it must be a through and fair process.

It will depend on the complexity of the issue as some investigations will take longer than others. A more complicated case could take several weeks to investigate depending on how much information needs to be looked into and how many people need to be spoken to.

Any delays, and reasons for delays, during any stage of an investigation must be communicated to all parties involved.

The investigator must ensure they gather all the information they need.

During an investigation more evidence may come to light, so time needs to be set aside for this.

TYPES OF EVIDENCE

There are several ways that evidence is gathered in an investigation, a lot will be physical investigation which includes:

- Emails
- Receipts
- Various paperwork
- CCTV Footage
- Attendance Records
- T&A System Data
- Phone records
- Computer records

When obtaining evidence, it is vital that the relevant laws are followed including data protection and an employee's right to privacy.





QUESTIONS THAT YOU WOULD ASK DURING THE INVESTIGATION PROCESS

The questions that are asked during an investigation can determine the outcome of the investigation. It is important not to ask leading questions during any of the interviews, or to put any words into the employees' mouth.

KEY QUESTIONS TO ASK INCLUDE:

- Can you tell me what happened?
- When did it happen?
- Where did it happen?
- What was your reaction at the time?
- Did anyone else witness it? Or over hear what was said?
- Have you reported it to anyone before or told anyone else?
- When did you tell them?
- How has it affected you?
- Do you have any evidence to anything you have said regarding what happened?
- Is there anything else you wish to add to the investigation?
- Is there anyone else you think could provide relevant information to the investigation?
- Is there anything you wish to ask regarding the investigation?
- What action do you want the Company to take?





HOW TO PLAN AND CONDUCT A GOOD INVESTIGATION INCLUDES DOING ALL THE FOLLOWING:

- Decide if there is an issue to investigate
- Take immediate action, do not sit on the issue
- Choose someone to conduct the investigation that is trained in investigations and impartial to the matter of concern
- Inform the person who made the complaint of the process
- Plan the timeframes and who is to be spoken to and when
- Conduct the interviews of all involved
- Gather all documents and information, ensuring compliance with the Law
- Evaluate all the evidence
- Re-interview anyone needed, or anyone new
- Decide on the action and next steps
- Communicate to all involved





WHAT HAPPENS AT THE END OF AN INVESTIGATION?

At the end of an investigation, the person who has conducted the process must recommend one of the following:

- Formal action to be taken – this could be a disciplinary hearing, changes to the company's procedures, or further investigation into other matters that were found during the process.
- Informal action – such as training, coaching, mediation, or counselling.
- No further action to be taken.

IS THERE A RIGHT FOR EMPLOYEES TO BE ACCOMPANIED?

Employees have a legal right to be accompanied at any meeting during a grievance or disciplinary process. The person must choose their companion from one of the following: a colleague / a trade union representative / an official employed by a trade union.



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