

ACAS has issued guidance outlining “the essential decisions and actions that employers must and should make” when deciding to conduct an investigation in the workplace and providing information for anyone who has been appointed to conduct disciplinary or grievance investigations to ensure they conduct a thorough and fair process.

## Organisational preparation

The ACAS Code of Practice on Disciplinary and Grievance Procedures emphasises the importance of carrying out necessary investigations of potential disciplinary matters without unreasonable delay in order to establish the facts of the case. This is an important step, employers often either overlook entirely or do not handle properly. This ACAS guidance is therefore welcome and worthy of careful consideration.

Most problems can be settled quickly and without undue process. An employer should therefore consider whether a quiet word or informal action may be all that is required to resolve a matter.

If an informal chat is not practical or possible the employer should consider a number of factors before commencing an investigation:

- Will a preliminary investigation help?
- Does the matter warrant further action?
- Do any internal policies or procedures require an investigation?
- Should the subject(s) of the investigation be suspended pending its outcome?

An employer should act promptly if an investigation is necessary. Upon instigating an investigation, an employer should decide the precise purpose and scope of the investigation, how long it will take, who should oversee the matter within the organisation and who should be the investigator.

An investigation should be kept confidential and temporary measures may be put in place while the investigation is conducted, such as suspension or a transfer of the employee.

Unless there is a contractual right to suspend an employee without pay (which would be unusual), suspension should always be on full pay and should be confirmed in writing, with clarification that the suspension does not connote guilt or any indication of the likely outcome of the investigation.

## An investigator’s preparation

Once it has been decided to conduct an investigation, it may be beneficial to create an investigation plan to follow, providing a structured approach. Preparation may include:

- Checking internal policies and procedures.
- Identifying sources of evidence.
- Identifying the parties relevant to the investigation.
- Deciding in what order evidence should be collected.
- Arranging where meetings should take place.
- Contacting the relevant parties and their managers.
- Keeping managers informed of the process.

## Handling an investigation meeting

While investigation meetings are often needed, some investigations only require the collection of written and physical evidence. An investigation meeting is an opportunity for an investigator to interview the individual involved, or someone who has information relating to the matter under investigation.

Although there is no statutory right for an employee to be accompanied at an investigation meeting (as it is not a disciplinary meeting), not being accompanied could leave the individual at an unfair disadvantage. It may also be provided for in a work place policy. Therefore, it is often safer to offer the employee the option of having a fellow employee accompany him or her at an investigatory meeting, particularly if the facts being investigated are very serious in nature.

## Gathering evidence

Any investigator appointed should insofar as is possible be unconnected with matters under investigation. The investigator should remember their role is to establish the facts of the matter. They should consider evidence that supports the allegations **and** evidence that undermines the allegations. Once collected, an investigator should analyse each piece of evidence objectively and consider:

- What does the evidence reveal?
- Are there any doubts over the credibility and reliability of the evidence?
- Is the evidence supported or contradicted by any other evidence?
- Do the results suggest further evidence should be collected?
- Should written witness statements be prepared?

Evidence to consider collating includes witness statements, written records and documentation (e.g. attendance sheets and paper copies of electronic material), physical evidence (e.g. CCTV, computer and phone records) and searches of personal possessions.

If witness statements are to be prepared and relied upon further investigation may be required to verify or undermine the information given. It might also be appropriate for omissions to be made so as to avoid identification of the witnesses.

## Writing an investigation report

It may be helpful if the investigating officer prepares a report summarising the steps taken in the investigation, the investigations, and the evidence available in respect of them. Such a report might assist with the conduct of the disciplinary hearing. Any investigation report should cover all the facts that were and were not established and whether there were any mitigating circumstances that require consideration. To exclude any information may leave an investigation open to accusations of bias and filtering evidence to suit one's findings.

The report should reflect the investigator's own conclusions. While an investigator may seek advice from a third party, such as HR, the conclusions should be their own.

An investigator will often be asked to make a recommendation. Any recommendation should be restricted to suggesting whether any further action may

be necessary or beneficial. In most circumstances an investigator should recommend:

### FORMAL ACTION

- To initiate a disciplinary hearing.
- Changes to an organisation's policy or procedure.
- Further investigation into matters uncovered.

### INFORMAL ACTION

- Training or coaching for parties involved.
- Counselling for the parties involved.
- Mediation for the parties involved.
- Notification that further similar action may result in disciplinary action.

### NO FURTHER ACTION

Counselling, mediation or another form of support that may be beneficial to the parties involved and the organisation.

It is important to note that it should be the decision maker and not the investigator who makes the final decision as to whether or not a disciplinary hearing will be held.

## After an investigation is completed

Once an investigator completes their investigation and hands in their report they will not usually be involved in further action other than the following possible matters:

- Discussing the report in person with the individual/ panel they report to.
- Attending the disciplinary hearing.
- Advising on any amendments or updates to the organisation's policies and procedures.

There will usually be a need to retain investigation reports for a period of time. The report should be securely disposed of once it becomes irrelevant or out of date.

**If you require help or further guidance, please contact our employment team.**

**020 7636 0555**