



ABILITY · EQUALITY · INDEPENDENCE

Investigations



Objectives

- Understand what is required during employment investigations
- Know what skills and qualities are needed for an investigator
- Explain the steps you need to take to investigate effectively and put this into practice
- State how to weigh up evidence and write a report

Content

- When are investigations required
- Informal investigations
- Who to involve and what to prepare
- Timeframes
- Questioning
- Confidentiality
- Supporting documents
- Investigation conclusions

Who has undertaken an investigation before?

How do you feel about undertaking an investigation?

When might an investigation be required?

- Poor performance
- Misconduct
- Grievances
- Absence
- Capability

Informal investigation

- Talk with those involved
- Look at evidence
- Keep records
- Maintain confidentiality
- HR do not need to be present
- Determine next steps

Outcomes of an informal investigation

- A formal investigation is required
- No further action is required
- There is evidence that an informal process should take place e.g. informal conduct meeting

Who should carry out an investigation?

Appropriate procedure might say who should conduct investigation

Person carrying out investigation should not:

- be involved in the issue
- be the same person conducting any disciplinary procedure

POLL

- 1) Can the manager of the employee being investigated be the investigator?
- 2) Would the investigator of a grievance carry out the grievance hearing?

Before the investigation – what to prepare?

- Prepare questions
- Use templates provided by HR
- Be familiar with the facts and the sequence of events
- Prepare and discuss with HR an investigation plan
- Review documents which HR sent to the employee which reassure the witness that you are simply looking to establish the facts, any review any supporting evidence sent
- Pre-empt any questions the staff members may have about the investigation
- HR arrange a meeting to discuss these points

Creating your investigation plan

What do you need to think about when creating an investigation plan?

- What evidence is required?
- Which witnesses do you need to speak to?
- What files and documents might you need?
- CCTV?
- IT or Phone records
- Who else might you need to speak to?
- Timeline
- Other records?

Investigations

Early on in the investigation you may come across difficult circumstances. What else might you need to consider in these circumstances?

- **Criminal activity**

Contact the police. Do they have any advice? Can we continue our investigation? Report the crime

- **Safeguarding concern**

Notify Grace Eyre safeguarding lead? Do we need to let the intake team know?

- **Serious allegation / potential gross misconduct**

Do we need to consider suspension?

HR Will support with all of the above

Investigations – Timeframes

Why are timeframes so important?

- Helps manage expectations
- Ensures policy timeframes are adhered to
- Let HR know if you cannot keep to the timeframes. HR will notify those affected
- Adding timeframes assures the employee the matter is being taken seriously
- Witness' and statement will be fresh in their mind
- Information which may be destroyed overtime is collected
- Supports a fair process

Questioning Techniques

An investigator should be able to ask questions that **challenge and test the credibility** of the information being given in a **manner that is professional and does not intimidate** an interviewee.

There are a number of different types of questions an investigator may use during an investigation meeting to help them control the meeting and gather the full facts of the matter from the interviewee.

Questioning Techniques



Types of Questions

Open questions:

Encourage an interviewee to open up.

They can provide a rich source of information that an investigator can then go on to explore in more detail.

For example:

Explain to me exactly what you saw...

Describe exactly what happened...

Talk me through what you heard...

Types of Questions

Closed questions

Usually give a Yes, No or definite answer.

They can be helpful to gather specific facts and can help focus an overly talkative interviewee.

For example:

What time did you leave your workplace?

How many times did that happen?

Did you speak to your manager about that?

Who else was there?

Types of Questions

Probing Questions

Can test the strength of an interviewee's account and challenge any inconsistencies.

However, it is important to phrase these questions so they are inquisitive rather than interrogative.

For example:

When you say she was aggressive what exactly do you mean by aggressive?

You mentioned earlier that X... tell me more about that.

Types of Questions

Feelings questions

Can help to focus an interviewee on what is important to them and reveal their beliefs.

For example:

What was important to you about that?

Types of Questions

Summaries

Provide an opportunity to check that the correct information is recorded.

They also allow the interviewee to reflect on what they have said, to correct any inaccuracies and to give further details where there are gaps.

For example:

So can I clarify that what you are telling me is that you left your workplace at 10am because there was a problem at home and you did not return to work. Have I got that right?

Questioning approaches to AVOID

Interrogative questions:

The aim of the investigation is to establish the facts rather than interrogate someone. Although sometimes necessary, “Why” questions can make people defensive and close up.

For example:

Instead of “Why did you do that?”, use “What made you decide to do that?”

Leading questions:

These can lead the interviewee to provide the answer the investigator hopes or expects to hear.

For example:

Instead of “Do you think he was perhaps over reacting?”, use “What did you think of his reaction?”

Multiple questions:

Lead to confusion and the interviewee will answer what they heard first, last or the part they are most comfortable answering.

For example:

Instead of “What is your role, do you like it and why?”, ask each

BREAKOUT EXERCISE

Create a list of questions you would like to ask...

Group 1. A support worker who has left someone they support to get the bus home alone. It clearly states in their support plan that they must be accompanied at all times.

Group 2. A employee who is on hybrid working has not been completing assigned tasks on time. They have recently missed a few important deadlines and they have been uncontactable for large portions of the day.

Think about

Who are you asking the questions to?

What issues need exploring?

What questions do you need to ask?

What type of questions will you use?



10 minute break

Interviewing tips

Do

- ✓ Allow the witness to refer to any documents to refresh their memory
- ✓ Pause the meeting if the witness needs a break, or adjourn if the witness is very upset
- ✓ Record all the pertinent facts
- ✓ Keep calm and focused
- ✓ Remind the witness to keep the matter confidential

Don't

- ✗ Be afraid to question the witness's version of events
- ✗ Encourage the witness to offer their opinion
- ✗ Offer your own opinion, be judgmental or speculate on the outcome of the investigation
- ✗ Draw hasty conclusions
- ✗ Disclose any confidential information

Confidentiality

- Applies to everyone in the process
- Treat witness statements as confidential
- Do not give absolute guarantee of confidentiality
- Employees have right to request access to information about them, eg witness statements
- Preferable to get third party's consent to disclosure or make witness statement anonymous

Investigations – person under investigation

- May need to interview employee suspected of misconduct
- This helps to establish core facts and provide guidance about conducting rest of investigation
- Prepare a list of relevant questions beforehand
- Point out and question any discrepancies
- Do not be afraid to challenge what employee says
- Make sure whole story is uncovered
- In misconduct context, ensure interview does not turn into disciplinary hearing

Investigations – witnesses

- Prepare questions, but be flexible about asking additional questions or amending them as new information comes to light
- Be familiar with the facts and the sequence of events
- Prepare a chronology
- Reassure the witness that you are simply looking to establish the facts
- In advance of the meeting, provide the witness with any documents that may act as a memory prompt or help them to give evidence
- Be open to answering any queries that the witness might have prior to the meeting
- Through open and closed questions, direct witness to focus on issue

Documents and evidence

- Collating and reviewing documentation makes up bulk of many investigations
- Examples of documents might need to consider:
 - Attendance issues:** absence records
 - Poor performance:** one to ones
 - Misconduct:** Informal meeting notes / code of conduct
- May need to examine computer and telephone records
- Act in accordance with our policies
- Act in compliance with data protection laws
- HR will be available to support investigations and evidence gathering

Fact, Opinion or Assumption

Read the paragraph below and answer the polls questions that follow

John works for Papa's Pizzas as a delivery person. Papa's Pizzas are the most popular take away in the town of Milchester, based on a recent survey. John does a 5 hour shift on 3 nights a week and is considered by the owner to be his most efficient delivery person. He is able to deliver 25 Pizzas in a shift, whereas none of his colleagues have ever managed more than 20 in theirs. As part of his role of Head Chef, Marco makes the pizza dough and is told by his customers that it's the best flavoured mix in Milchester. There are 4 other Pizza parlours in the local area. Marco studied for a catering degree at Bournemouth University, which is considered the best university in the South of England for hospitality based courses. Sylvia is a waitress in the restaurant at Papa's Pizzas. She is very popular with customers and doubles her wages in tips, meaning she earns more per hour than Marco. This clearly is not fair and Marco has complained to the owner, who now puts all tips into a pot, so that they can be shared out.

Conclusion of investigations

Reporting what is likely to have happened

While reporting with absolute certainty on a matter is desirable it will often not be possible.

An investigator should arrange their evidence into:

Uncontested facts: Where the facts are not in dispute, they can simply be reported as factual.

Contested facts: Where the facts are contested or contradictory they should determine what, on the balance of probabilities, took place.

Unsubstantiated claims: Where an investigator is unable to substantiate an allegation they should consider if further investigation is reasonable or report that they are unable to draw a conclusion.

Recommendations

In most circumstances an investigator should recommend:

Formal action

- To initiate a disciplinary hearing (not a sanction)
- Changes to an organisation's policy or procedure
- Further investigation into other matters uncovered

Informal action

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

No further action

Conclusion of investigations

- Disciplinaries - present evidence to the deciding manager who will usually conduct the disciplinary hearing if required.
- Formal grievances – Investigation will usually be part of managing grievance. If conducting a separate investigation, recommendations should be passed to grievance manager.
- Capability – Could be ill health, performance or long term absence investigation. In these cases the investigations are done over a period of time and evidence gathered through formal absence / capability / performance meetings.

BREAKOUT EXERCISE

Create an investigation plan

Group 1. An employee has had 3 unauthorised absences in 4 months. They were spoken to informally after the first and second occurrence, but they have had a further unauthorised absence. In the informal meetings, they said they had forgotten they were due to work.

Group 2. An employee has shouted aggressively at another employee while someone we support was present. This upset both the employee and person we support.

Think about

What policies and procedures might you need to review?

Who do you need to interview?

What issues need exploring? / what questions do you need to ask?

What issues might you face?

What evidence might you need to gather ?

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Questions?