



A Guide to Workplace Investigations

{with Reporting Template}



A Guide to Workplace Investigations

A workplace investigation is a fact-finding process to collect all the relevant information when a grievance or complaint is made.

Once you have all the facts and information, your organisation can then make a reasonable decision on what action to take.

Without completing a balanced investigation an employer could be open to legal action.

This paper is designed to help you conduct your workplace investigation from start to finish.

In this paper

- 3** The challenges with workplace investigations
- 9** When to investigate
- 15** Do you have an alternative option?
- 20** The investigation process
- 33** Making it a human process too
- 36** Top tips

The Challenges

One of the biggest issues in workplace investigations is a failure to conduct the investigation to the necessary standards.

Workplace investigations are tricky.

And problems can come after the investigation itself, when there are, for example, gaps in evidence. These can come from things like not asking the right questions or judging a person's guilt before facts have been gathered.

Why are thorough and balanced investigations so important?

>> AT A GLANCE:

1

Meeting the standard of proof and the importance of robust evidence

2

Workplace investigations are time consuming

3

Problems with satellite offices or multiple sites

4

People don't like to come forward

5

HR and the rest of the leadership team can become part of the problem

The standard of proof

The standard of proof

If you are involved in a tribunal, a lot will revolve around how effective procedures are and the way the investigation was carried out.

When we talk about standard of proof, we're referring to what extent to which you must prove that an incident, or piece of information, is true. Part of this burden of proof is ensuring you gathered the right evidence and in the right way too.

Sound investigations protect you from possible action later on.

The standard of proof in criminal courts is among the strictest. Evidence in criminal cases is required to be proven 'beyond reasonable doubt'.

It's not the same for workplace investigations. But that doesn't get an investigator off the hook.



When we talk about standard of proof, we're referring to what extent to which you must prove that an incident, or piece of information, is true.

Instead, the evidence you gather must stand up on the 'balance of probabilities'.

That is, is it more likely to have happened than not?... based on robust evidence gathering.

Thinking about your investigation in these terms means your approach or findings are less likely to be open to criticism.

You don't have to conduct your investigation to the standards of criminal procedures. But were your organisation to end up involved in legal action, a court would scrutinise the evidence and the investigation process.

Courts do not look favourably on investigations that have gaps in their evidence gathering, or have made decisions using a flawed process.

The consequences might be an uplift in any award.



Section 4 deals in depth with the process of a workplace investigation. It includes how to carry out robust fact-gathering, interview and questioning techniques, types of evidence and witness statements.

Investigations are time consuming

Workplace investigations aren't a good experience for anyone involved – not the complainant, not the respondent, or the person managing it.

Investigations are a distraction for businesses.

And investigations take time and resources.



'There's no such thing as a dragon'

In the 1975 children's book of the same name, Billy Bixbee tries to convince his mum that there's a dragon in the house. 'There's no such thing as a dragon,' she says. And each time she says this the dragon grows. Eventually it grows so big that the family's house is perched on its back. Finally, his parents have no choice but to accept there is a dragon, and instantly it begins to shrink to a manageable size.

It's often the same with grievances.

If an issue has been festering unaddressed for some time, a formal grievance could potentially have been avoided if the issue was dealt with sooner.

Unfortunately, delaying action is a common flaw in organisations.



The tip of the iceberg

The number of complaints you get and what's really going on are different. But understanding those grievances that don't make it as far as complaints, are vital for an organisation to know and subsequently grow.

They might be straight forward problems. But equally, they could show patterns of behaviour or processes that need to be addressed.

Of course, asking for feedback might result in more complaints. But it should also help reduce the problems that go unseen and those negative conversations that grow into dragons the size of houses.

Multiple sites and satellite offices

Interviewing, gathering evidence and speaking to those involved or witnesses gets harder when there are multiple sites or people are working remotely.

It might be harder to control confidentiality when people are working across several different sites too.

What's more, if your workplace investigation includes offices outside the UK, you might need to find a translator or someone with cultural knowledge of that region.



Getting people to come forward is hard too

Challenges

What's the incentive for people to come forward as a victim or as a witness?

Most incidents go unreported because of a worry of retaliation from the accused or for fear of being seen as a problem by the organisation.

Common fears include losing their job, being ostracised by colleagues and losing the chance for promotion.

It's also possible that a witness won't easily come forward because they felt guilty at not acting at the time of an incident.

While a company has every right to investigate an alleged incident, coercion rather than cooperation makes the job more challenging for investigators.

Consistency and fairness.
What do people really want at work?

Gallup's ongoing 'State of the American Workplace' study draws a simple conclusion; that workers leave managers, not the organisation.

Statistically it's about half of employees who leave because of managers. But Gallup CEO Jim Clifton, put it like this:



The single biggest decision you make in your job -- bigger than all the rest -- is who you name manager. When you name the wrong person manager, nothing fixes that bad decision. Not compensation, not benefits -- nothing.



**Because when issues go ignored...
... HR and the rest of the leadership team also become part of the problem. As and as above, no benefit, no team bonding day or free lunch can fix that lost faith.**

Workplace investigations are emotionally draining

Added costs, added time and less productivity... yes.

With a grievance investigation you are dealing with the aftermath not the prevention work. And that is draining.

Ultimately no one wants an investigation. Investigations can be emotionally damaging to all parties, not just the one who raised the grievance.



50% of respondents took 1-2 weeks off work during the investigation because of anxiety, depression, stress or diagnosis of a specific psychological disorder.

'Consequences of being accused of workplace bullying: an exploratory study,' by Jenkins, Moira et al

When to investigate?

>> AT A GLANCE:

1

Meeting the standard of proof and the importance of robust evidence

2

8 examples of when investigations are the right thing to do

Not everything needs investigating

When a concern or grievance is raised, you should always consider ‘will a quiet word fix it?’ before starting any formal process.

Many matters can be addressed, and hopefully resolved, with a conversation, rather than a formal process. It’s in everyone’s best interests.

However, your organisation’s policies may make it explicit as to when an investigation should take place.

According to your organisation’s policies, certain grievances might always require a formal investigation. For example, an allegation of inappropriate language might be resolved by a conversation, whereas an allegation of bullying might always require an investigation.

As guidance, when considering whether to formally move forward with a particular incident, Acas highlights three questions to ask:

Do any policies or procedures require an investigation?
Understand whether your policies or procedures require an investigation.

Does the matter warrant further action?
Consider whether further action is needed. For example, if it might require disciplinary action then some further investigation to understand the situation is required.

Will a preliminary investigation help?
Perhaps you might decide to gather some evidence of proof before deciding on carrying out a full investigation.

>> Important: If you decide an investigation is necessary, or even a preliminary investigation is necessary, act quickly. This keeps the incident fresh in people’s minds and defends against any criticisms of unfairness.

When? 8 examples of when workplace investigations are appropriate

1 Breach of procedures

Organisations have certain procedures, such as health and safety, in place to protect their employees and the public. Not following them can have severe consequences.

A fully-trained forklift driver injures themselves because they weren't wearing a seatbelt while operating the machinery, in breach of explicit company health and safety procedures. The driver is qualified and knew of the legal requirement to wear a seatbelt while operating the machinery, but chose not to.

2 Safeguarding policies

Safeguarding policies are put in place in circumstances, for example, where there may be children or vulnerable adults.

A teaching assistant waited four weeks before reporting that a usually outgoing child has become quiet and been wearing clothes that cover her whole body, despite the hot weather. While the teaching assistant saw no evidence of any harm, the assistant is required to report any suspicions to senior managers. As a potential safeguarding issue the school policies are very clear about the reporting of such incidents.

3 Financial irregularities

People who have access to sensitive financial information have the opportunity to take wrong actions. Fraud can take many forms, requiring an investigation to take place.

Examples of workplace fraud can include financial kickbacks or bribes, improper dealings or simply using the organisation's resources for personal gain.

4 Discrimination

The Equality Act 2010 protects people from discrimination. At work, discrimination investigations focus on whether an employee was treated differently because of their innate characteristics.

There are currently nine protected characteristics:

- age
- gender reassignment
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion or belief
- sex
- sexual orientation

Discrimination can come in one of the following forms:

- direct discrimination - treating someone with a protected characteristic less favourably than others
- indirect discrimination - putting rules or arrangements in place that apply to everyone, but that put someone with a protected characteristic at an unfair disadvantage
- harassment - unwanted behaviour linked to a protected characteristic that violates someone's dignity or creates an offensive environment for them
- victimisation - treating someone unfairly because they've complained about discrimination or harassment

Source: www.gov.uk

» **The main responsibility for preventing discrimination at work is with employers.**

For example, Bill, a shop assistant, makes a negative comment to someone they work with about their race. This would be grounds for a discrimination investigation. But Bill's employer could also be held responsible for that discrimination, unless they'd already taken all reasonable steps to prevent discrimination happening.

(Source: Acas)

5 Harassment

Harassment is unwanted or offensive behaviour related to a protected characteristic.

For example, Jay has never told people at work that he's gay. One evening he's out with his partner and meets Ali, his supervisor. Ali tells the rest of the team that Jay is gay. Other people in the team start avoiding Jay and ignoring what he says in daily team meetings. Jay finds this humiliating and very uncomfortable. This behaviour is likely to be harassment on the grounds of sexual orientation.

(Source: Acas)

To be considered sexual harassment the unwanted behaviour must have either:

- violated someone's dignity, whether it was intended or not
- created an intimidating, hostile, degrading, humiliating or offensive environment for them, whether it was intended or not

For example, Daniel is an apprentice in an office where everyone else is female. He is expected to make drinks for everyone and do the washing up.

Several people make comments that "it's nice to see a man doing the chores for once" and this becomes a common joke in the team. Daniel feels disrespected and intimidated. This behaviour is likely to be harassment on the grounds of sex.

(Source: Acas)

6 Victimisation

Victimisation is negative treatment as a result of being involved with a discrimination or harassment complaint.

For example, Luca was a witness at an employment tribunal, supporting a colleague who made a claim of sex discrimination.

Luca applies for a promotion and does not get it. A member of the selection panel says Luca is a troublemaker who supported a discrimination claim against the company.

If this is the reason for the panel's decision, Luca is being victimised.

(Source: Acas)

7 Bullying

There is no legal definition of bullying, it is described by Acas as potentially unwanted behaviour from a person or group that is either:

Offensive, intimidating, malicious or insulting

An abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone

It can take the form of regular behaviour or a one-off incident. And it's the same whether it's face to face, online in calls or other forms.

Importantly, it might not always be obvious or noticed by others.

The following could be considered bullying:

- constantly criticising someone's work
- spreading malicious rumours about someone
- constantly putting someone down in meetings
- deliberately giving someone a heavier workload than everyone else
- excluding someone from team social events
- putting humiliating, offensive or threatening comments or photos on social media

If the bullying is based on a protected characteristic it could be harassment.

8 Inappropriate relationships

YouGov research shows that nearly a fifth of people in Britain met their current or most recent partner at work. And realistically it wouldn't be effective to outright ban relationships at work.

But not all romantic workplace relationships are appropriate. And it can lead to problems such as:

- A conflict of interest
- Subjective and unfair recruitment decisions
- Preferential or inconsistent treatment of employees
- Breaches of confidentiality
- Harassment or bullying

For example, a relationship might be considered inappropriate between people in unequal positions. This would

be especially relevant if one party has authority, influence, or power over the other's conditions of employment or has the ability to directly impact the other's career progression.

If there is the potential for one party to act inappropriately towards the other at work, you risk a grievance being raised.

Also consider any measures you take to address any conflict between parties who have a personal relationship. If this is done so in a way that's unfair or discriminatory manner, then this too can lead to formal grievances being raised.

Article 8 of the Human Rights Act 1988 gives employees the right to a degree of privacy in the workplace.

Do you have an alternative?

>> AT A GLANCE:

1

Alternative dispute resolution

2

Is mediation right?
Mediation is less stressful

3

Dealing with conflict

4

Organisational conflict approaches

A formal grievance doesn't necessarily mean a workplace investigation. If the issue can be resolved in a simple way, then it's in everyone's best interests to do so.

Alternative Dispute Resolution (ADR)

Acas lists the following methods of resolving workplace disputes before they get to tribunal stage.

- Early conciliation
- Mediation
- Collective conciliation
- Arbitration

Acas must offer free ‘early conciliation’ before an aggrieved party lodges an employment tribunal claim. Conciliation is similar to mediation, but any agreement reached in conciliation is legally binding.

Mediation

Mediation works where ‘right’ or ‘wrong’ don’t need to be settled. Where an outcome can genuinely be a win-win situation, mediation can both resolve the current grievance and allow the parties to continue with a good working relationship.

It’s not appropriate, for example, where an allegation of sexual harassment or discrimination has been made. It won’t be appropriate where the mental health of an individual is unsound, particularly if they are struggling with understanding the proceedings.

But where mediation is appropriate it’s highly successful.

MEDIATION IN NUMBERS

70 – 80%
success rate

18 months
average resolution time with litigation

45 days
average time to resolve issues through mediation

Mediation settles

94%
of cases within 10 days

90%
of Fortune 500 companies now use Alternative Dispute Resolution

Gitnux marketdata report 2024

Is Mediation Right?

Most grievance circumstances are unique, so there are no definitive answers. But CIPD suggests three questions to ask:

Who?	When?	What?
Mediation is suitable for conflict between colleagues of a similar job or grade, or between those with different jobs and levels of seniority, for example a line manager and staff, unless the allegation is serious.	It can be used at any stage in a workplace conflict including to rebuild relationships after a formal dispute has been resolved. In the early stages of a dispute, it can prevent a situation from escalating.	It can be used to address a range of workplace issues including relationship breakdown, personality clashes, and communication problems.

Relationship breakdown is one of the most commonplace reasons for mediation. If you can reach solutions that are more genuinely win-win, you'll increase the chances that relationships can continue afterwards.

Mediation is Less Stressful

Conflict solutions that draw up battle lines tend to create more tension and make parties more defensive of their views. It makes working together afterwards much harder, if the option to work together even remains. Mediation can also be a huge learning experience for everyone, creating both personal and organisational changes.

» **Tip: Consider writing mediation into your organisation's formal discipline and grievance procedures as an optional stage in your process.**



Dealing with conflict

In its paper 'Estimating the costs of workplace conflict' Acas found that conflict costs UK businesses in the region of £28.5 billion each year, or £1,000 for every employee. It causes repercussions for example tribunals and resignations.

It's in an organisation's best interests to learn how to manage conflict effectively.

Organisational conflict approaches

Managers might be great at deadlines and the technical aspects of their roles but are they as confident with the 'people' side of things?

- Arrange conflict coaching for managers. Train them to have those difficult conversations. They can use the training to manage a specific conflict, before or after mediation. 'Over a third (36%) of

organisations train people managers in handling difficult conversations or managing conflict and a quarter (26%) use facilitated discussions by HR' (CIPD).

- Similarly, you can build interpersonal and organisational competence at engaging in conflict.
 - Typically, employers believe their organisation deals with conflict much better than employees believe it is dealt with. With better insight senior managers can make sure their workplace culture is one that encourages people to speak up. A workplace should create an environment where complaints are taken seriously and handled quickly.
 - Training in interpersonal conflict competency will help people take their career to the next level. It supports their
- HR managers can lead organisational changes that are expected to be contentious or challenging. In this way they can better mitigate potential grievances.

capacity to manage a diverse body of direct reports. They'll be able to turn contentious issues into drivers of growth for their team or organisation.

Acas highlighted 'a deep antipathy to the notion of managing conflict among senior managers, who were hostile to any idea that the discourse of "conflict" should be accepted as part of organisational life'. Reframing resolution – managing conflict and resolving individual employment disputes in the contemporary workplace,

Naturally, if senior managers don't recognise conflict as an issue they won't recognise the problems in dealing with it.

 **Tip: You have a duty of care to the organisation's people to find the right method of conflict resolution. Not all grievances are suitable for an informal approach. If an allegation is serious such as sexual harassment, you may need to begin formal investigation straight away.**



Our employer survey shows that the use of informal approaches to managing conflict, such as mediation and training people managers in this area, has not increased in the past five years. This is disappointing and shows that employers are not tapping into the openness with which many people view the potential of mediation to resolve disputes at work.

CIPD, Managing conflict in the modern workplace.

The investigation process

>> AT A GLANCE:

1

Who should investigate?

2

Sensitivity

3

Suspensions during an investigation

4

Your investigation plan

5

Communicating

6

Collecting evidence

7

Conducting interviews and getting witness statements

8

Body language

9

Questioning techniques

10

Establish facts, not opinions

11

Producing a report

12

Disciplinary panels and hearings no

An investigation is part of a grievance procedure. As well as fact-gathering, you should also provide context around the grievance.

An investigation should:

- Determine if there is a case in the first place
- Collect and weigh up the evidence
- Be fair, with each party treated given equal opportunity and evidence gathered from both sides
- Provide the information to help the organisation come to a decision on next actions

And once an investigation has started it doesn't mean that it can't be stopped. For example, after starting an investigation, it might be that an informal resolution is deemed more appropriate.

Your organisation might have its own set of policies, but as a minimum it must follow the Acas Code of Practice on disciplinary and grievance procedures.



Important: The investigator's role is to gather evidence and facilitate the process. The investigator doesn't decide sanctions.

Important: A court may award higher compensation as the consequences of an investigation that is not thorough and does not meet the standard of proof on the balance of probabilities.

Who should investigate?

Consider:

- Conflicts of interest
- Sensitivity around the issue being investigated

To keep things fair and neutral, where possible a third party, or someone who's not involved in the case, should investigate. This might mean other senior managers or an HR manager. Ideally the person investigating will have had training.

If it's a disciplinary, the best scenario is for a different person to handle each stage. In the case of a grievance, the person hearing the grievance should investigate.

An investigation should also be kept confidential. In workplaces word does get out but even in these circumstances the details should be kept confidential where possible.

In choosing an investigator, Acas suggests the following guidance:

- Are they personally involved in the matter being investigated?
- Would the appointment raise any conflict of interest concerns?
- Are they likely to be influenced by people involved in the matter?
- Might they be involved in any subsequent decision making on the matter?
- Do they have a good knowledge of the organisation and how it operates?
- What is their availability during the investigation's provisional timeframe?
- Are they trained and/or experienced in how to conduct investigations?
- How confident are they at communicating in writing and/or orally?
- What training or support may they require?



If it's a disciplinary, the best scenario is for a different person to handle each stage. In the case of a grievance, the person hearing the grievance should investigate.

Sensitivity

It may seem more appropriate for a member of the same sex to investigate an allegation of sexual harassment. It may be more appropriate for a person of the same ethnicity or religion to investigate allegations of racism or religious-based grievances.

Conversely, a person who is under investigation may feel actions such as above will result in the outcome being a foregone conclusion.

When choosing who should investigate, applying sensitivity in the context of the allegations is important.

And for these reasons, transparency and fairness in the process are also look so crucial. The

investigation must be genuinely fair and neutral, and without bias, as much as it can be to mitigate these concerns.

Overall, the survey found that of all those who said they experienced sexual harassment at work, only 15% actually reported it. The most common allegations, such as sexual jokes or inappropriate stares, were the least reported.

The study showed there is a proven relationship between satisfaction with the outcome of reporting sexual harassment and satisfaction with the process.

Simply, if investigations are an effective and responsible process, more people will come forward.

BUT MANY INCIDENTS GO UNREPORTED

Often the most frequently experienced behaviours were among the least commonly reported behaviours: approximately a quarter of the

28% experiencing unwelcome staring or sexual jokes reported these behaviours.

33% of those who experienced sexual harassment in the last 12 months had formally reported it.

Sexual Harassment Survey, 2020, Government Equalities Office

Suspensions during an investigation

You may consider suspending someone during an investigation.

A suspension will only be the right thing to do in certain situations. You will need to consider each situation carefully and on a case by case basis to decide whether suspension is right. You should not use suspension automatically.

Being suspended can be stressful for an employee and you have a duty to consider their well-being. If you do decide to suspend, plan what support they will need during this time.

Important: Suspension should not imply guilt and not be used as a means of discipline. If your reason to suspend is not reasonable, you could be breaking the contract of employment. This could lead to legal action.

Unless there's a clear contractual right, an employer will not be entitled to suspend without pay. The employee should continue to receive their pay and normal benefits.

Before a suspension, get information to help you make the right decision, such as :

- What has happened
- Who is involved
- The level of seriousness

Acas advice is that you should only consider suspension if you reasonably believe it would protect any of the following:

- The investigation – for example if you're concerned about someone damaging evidence or influencing witnesses
- The business – for example if there's a genuine risk to your customers, property or business interests
- Other staff
- The person under investigation

Further Acas advice is to look at the individual circumstances and check that both the following apply:

- You took the correct steps to believe suspension was a reasonable decision
- Employers in a similar industry, with the same information as you, would see that a decision to suspend was reasonable



Tip: You should always see if there is an alternative to suspending someone

For example a shift pattern change or moving to a different part of the organisation might be alternatives to suspension. Consider working from home or moving to a different site if these are appropriate.

Your investigation plan

This is commonly where investigators get things wrong. Understanding what you are actually investigating must be clear before you do anything.

Create a detailed plan of what will be investigated and how you will get the information you require to carry out the investigation as quickly but as thoroughly and fairly as possible.

Don't consider your plan a fixed thing either. Be prepared to modify your investigation as and when further evidence comes to light.

Consider:

- What needs to be investigated and who is carrying out the investigation
- Policies or organisation guidelines to follow
- Your sources of evidence, for example work records, emails or CCTV recordings and time limits to those such as staff holidays or CCTV images being deleted
- Who your witnesses will be
- Maintaining confidentiality
- Will the investigator be expected to give recommendations
- Other relevant points or information

This will make the investigation run as smoothly as possible, clarify what needs to be done and make sure the process is fair, and reduces the risks of negative impact on the business.

Employee well-being should be at the forefront throughout.

Communicating

The investigator should explain to employers and the employees involved what they'll be doing. They may decide to delay telling the employee, if there's a risk that they might tamper with evidence for example.

Acas has letter templates for explaining the process, but generally the explanation should cover:

- why it's happening
- who is investigating
- what will be investigated
- that they'll need to talk to any witnesses
- how long it could take
- next steps
- that it will be confidential

Explain to anyone involved their right to be accompanied in grievance procedures. And while it's not a legal requirement in disciplinary procedures, it's good practice. Consider this especially if a person's first language is not english and there may be problems in fully understanding the process.



Collecting evidence

Your plan should cover what information you'll need. Evidence collection might take a natural order, but will likely change depending on what's being investigated.

When gathering evidence, follow your plan, which sources of evidence you can use and time limits on gathering the information.

Also allow for different types of evidence coming to light as the investigation progresses.

The physical evidence you collect could include:

- emails
- paperwork
- receipts
- computer records
- phone records
- CCTV recordings
- attendance records



Tip: Ensure your evidence collection follows data protection laws and other legal obligations.



Conducting interviews and getting witness statements

If a person has relevant information, you might need to interview them and take witness statements.

If there are a large number of witnesses you won't have to interview them all. Start with a few and see if their accounts are consistent.

Witness statements should include:

- answers to specific questions
- their name and job title
- the date, place and time of any relevant issues
- what they saw, heard or know
- why they were able to see, hear or know about the issues
- the date and time of writing along with their signature



Listening is a vital part of conducting an interview. It helps you get a better understanding of the points of view of those involved.

Give your witnesses reasonable time to make the statement.

Listening is a vital part of conducting an interview. It helps you get a better understanding of the points of view of those involved.

When interviewing, have a list of questions prepared.

Be open minded and concentrate on what the person being interviewed says.

Listen for points the interviewee avoids and allow them to finish before moving on to the next question.

Using silence is a good technique to get people to elaborate on what they are saying.



Tip: It can be helpful to allow a person being interviewed to be accompanied. It's less stressful for the interviewee, can result in more open answers and can help with the transparency of the process.



Your body language

Your body language needs to reassure anyone being interviewed that you are listening and that you are impartial and the interview is being conducted professionally.

Maintaining good body language:

- Be relaxed and face the person being interviewed
- Maintain good eye contact
- Don't fold your arms, which can be seen as intimidating
- Nod and using facial expressions to show you are listening

>> Tip: Don't make judgements about the interviewee's body language. It's a stressful time. If their body language becomes an issue you could sensitively ask them about it.

Questioning techniques

Investigations are designed to establish facts. In this way any questions should not be leading, but should be challenging to get to the truth (on the balance of probabilities), but without being intimidating.

Note: Using ‘why’ can come across as accusatory, so we suggest ‘what’ instead. i.e what did you think about that? Rather than ‘why did you think that?’

OPEN

Designed to get the interviewee talking and open up. Open questions encourage general responses that can be drilled into later.

For example:
Describe exactly what you saw

Talk me through what you heard

SPECIFIC

These are commonly known as ‘yes’ or ‘no’ questions. Here you might follow up something from an open question or need specific details. They can also help you with an interviewee that is very talkative.

For example:
Where were you standing when this happened?

What time was that?

CHALLENGING

You might need to probe further into a response or test the credibility of an account. You need to do it with impartiality and a view to challenging inconsistencies, not interrogation.

For example:
Earlier you said XYZ, what did you mean by that?

Tell me in more detail about XYZ

EMOTION

These might help reveal an interviewees beliefs and positioning on a matter.

For example:
What made it a concern for you?

How did you feel at the time?

Establish facts not opinions

Investigations are a fact-finding exercise. It's a task to uncover if there is a case to answer. It is not the investigator's role to recommend sanctions or outcomes, simply to establish and present the facts.

Remember too, the standard of proof is the balance of probabilities. You are not expected to establish beyond all reasonable doubt, such as is the standard of criminal courts.

In this way you might consider arranging your evidence into uncontested facts and contested 'facts', that is where facts are in dispute.

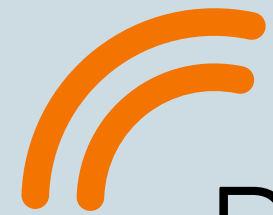
If a 'fact' is contested and you are getting contradictory views you could give a summary of what you believe based on the balance of probabilities.

If a claim has no evidence behind it whatsoever, you could consider further investigation or confirm that you cannot support it with evidence.

Minimise bias by using an evidence-based approach, relying on evidence that's both relevant and objective.



In this way you might consider arranging your evidence into uncontested facts and contested 'facts', that is where facts are in dispute.



Don't exclude any information. It might leave an investigation open to accusations of bias and filtering of evidence to suit the findings.

Producing a report

While a written report is not always needed, it's good practice to do so.

Your investigation report should cover all the facts that were and were not established, and whether there were any mitigating circumstances that also require consideration.

Don't exclude any information. It might leave an investigation open to accusations of bias and filtering of evidence to suit the findings.

The report should reflect your own conclusions. You may seek advice from a third party such as HR, but the conclusions should be your own.

Remember too who will read your report. It will often include the employee who raised a grievance or the employee under investigation.

So:

- Write in an objective style
- Don't use nicknames and jargon
- Keep to the facts
- Explain any acronyms or abbreviations
- Include all the evidence that was collected

Disciplinary panels and hearings

The investigator doesn't decide sanctions. As such you might be required to present your report at a disciplinary panel.

Here you will be required to present your main points and show how you came to the conclusions you did. Highlight what can and can't be proven and any misconceptions.

At the start of the process you might have been asked to give recommendations. **This is not the same as sanctions but would be:**

- A recommendation for formal action
- A recommendation for informal action
- A recommendation for further investigation

If no further action is recommended it's still an opportunity to improve processes within the organisation.

It's also an opportunity to re-evaluate if informal action is a better outcome.

SECTION 5

It's a human process too

>> AT A GLANCE:

1

Keeping everyone up to date

2

Remember the impact on your people

An investigation seeks to establish facts. It's stressful for all involved and the wellbeing of those involved should be at the front of an investigator's mind. It's not an interrogation or a judgement.

But there are ways of making the process more human.

Keeping everyone up to date

Make sure all parties involved are kept up-to-date with the progress of the investigation in a timely manner.

Timelines can quickly alter as new information comes to light or new witnesses are uncovered so keeping everyone in the loop will help manage expectations and frustrations. People may feel judged or worried that their jobs are on the line.

An investigator should have the ability to build a rapport with their interviewees and allow them to feel that they've had an equal opportunity to voice their side of the story. Objectivity is vital.



An investigator should have the ability to build a rapport with their interviewees and allow them to feel that they've had an equal opportunity to voice their side of the story.

Choose your language wisely. Sensitive questioning is key in helping people feel at ease, which will in turn help to encourage honest responses and create the clearest picture of the incident in question.

Equally don't just jot down responses, but truly listen and understand what is being said. Active listeners are attentive, present, reflective and are always prepared to check their understanding or ask further questions.



Tip: Provide reasonable adjustments if required. Don't assume people don't need them. It's good practice to ask.

Remember the impact of a workplace investigation on your people

An investigation can often impact not just those directly involved but the wider team too.

Of course, the investigation must be as confidential as possible and protect everyone's privacy.

If the incident was particularly public others will have an expectation as to how it is dealt with and that it is being dealt with properly.

It is an organisation's duty to support the people in the workplace and show that it takes a proactive approach to creating a positive culture.



Top tips



1 Choose the right investigator

Ideally the investigator will be trained and understand impartiality and can spot bias.

You'll need to consider the individual who has made the allegations, the person who they are made against and the nature of the allegations. For instance, it might not be suitable for a manager to be investigated by a peer of the same seniority, as this could be influenced by managerial loyalties.

There may be cases where gender and race play a part in the choice of investigator too.

Consider using an external, impartial third party to conduct investigations, especially when issues brought forth are significant or previous attempts at resolution have been unsuccessful.

This is particularly crucial when the internal management structure lacks the capacity to handle escalating investigations effectively.

A good investigator:

- Has excellent communication skills
- Has self awareness
- Has proactive empathy
- Has active listening skills
- Is highly organised

2

Prepare, Prepare and Prepare Some More

Planning is vital for a successful investigation but often overlooked. Consider what you will be investigating and how you will get to the facts before you begin the investigation process.

For a thorough and impartial investigation the investigator must be fully briefed about the allegation brought against an employee. It is essential that they fully understand the nature of the accusation, have reviewed any evidence and have formulated an in-depth plan.

One of the most common mistakes in workplace investigations is starting without a clear understanding of what needs to be achieved. So clearly define your objectives before diving in.

Are you investigating a harassment claim, a performance issue, or a conflict between employees?

This will guide the entire process.



For a thorough and impartial investigation the investigator must be fully briefed about the allegation brought against an employee.

3

Offer a companion

Unlike a grievance interview, it is not a statutory requirement to offer a companion during a formal investigation.

However, it is good practice to do so, especially as it lends credibility to the investigation and reassurance that processes are being carried out accurately.

A companion offers comfort to the interviewee, giving the person being investigated the confidence to speak freely while aiding the investigator in asking for clarification for questions and/or answers.

4 Be respectful

An investigation is a process to gather facts in order to determine what has occurred. It is not a hearing. Judgement has not been passed.

It can be incredibly damaging to assume guilt, especially if the accused is indeed found innocent. It is therefore essential to conduct an investigation with the utmost respect for the dignity of the accused.

The location of the investigation needs to be carefully considered.

A typical on-site, glass-walled meeting room where colleagues or visitors are walking past can only fuel the rumours. Consider conducting investigations off-site or in a private room to provide a more confidential setting.

It is also important to make the person being investigated feel as comfortable as possible while being interviewed, so they can talk freely.

This is their opportunity to provide their side of the story. It is not a time for passing judgement, rather it is a time to listen.

If your investigation is open to criticism of unfairness it could lead to litigation problems later on.

5 A note on suspensions

Unless there's a clear contractual right, an employer will not be entitled to suspend without pay. The employee should continue to receive their pay and normal benefits. It may be tempting to suspend a person who is subject to an investigation but you should not use suspension automatically.

Being suspended can be stressful for an employee and you have a duty to consider their well-being. If you do decide to suspend them, properly plan what support they will need during this time.

But suspension should only be because there is reasonable cause to do so. It is not an implication of guilt or a form of discipline.

There are increasing numbers of malicious grievance cases (that is where grievances are lodged as a means of retaliation rather than fact). If your reason to suspend a person is not reasonable, you could be breaking the law.

Consider each situation on a case by case basis to decide whether suspension is right, for example if you're concerned a person under investigation might interfere with evidence or witnesses.



Tell Jane Workplace investigation training course

Our three-module investigation training course upskills in-house HR, line managers and leadership teams to conduct fair, inclusive and impartial workplace investigations.

What you'll learn

Whether you're a manager preparing to conduct your first investigation or an HR professional looking to refresh and refine your skills, Tell Jane's comprehensive workplace investigation training course is for you. In three hands-on modules, we guide you through the entire process, from planning to evidence-gathering to reporting, and equip you with a flexible toolkit that can be adapted and applied to any situation.

bring decades of HR experience and real-life insights to help you navigate nuances and tackle common challenges. We'll take a deep dive into the biases that can undermine an investigation's integrity and explore how to create an inclusive investigation process.

Through discussions, case studies, and practical exercises, you'll develop the skills to handle complex cases with sensitivity, empathy and professionalism.

Workplace investigations can be daunting for everyone involved, so we focus on the human element. Our dedicated trainers

<https://www.telljane.co.uk/hr-consultancy-and-support/workplace-investigation-training/>

Next Steps

To find out more about our e-learning, including costs, technical specifications and any other information, please drop us a line.

Call: **0800 689 0802**

Email **hello@telljane.co.uk**

Visit **www.telljane.co.uk**

Follow **[@telljaneofficial](https://www.instagram.com/telljaneofficial) on Instagram**

Let's get started.