

Dispute Resolution: Guide for Investigators

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This guide has been designed to assist those who need to carry out investigations as part of the dispute resolution process.


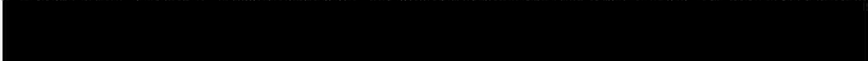
Introduction

The investigation process is a potentially stressful experience for those being interviewed and therefore it is important that you carry out the investigation as quickly as possible, whilst making sure that all the relevant facts are gathered and fully recorded.

The Investigator's role is to:

- **establish** what happened in a fair and objective manner;
- **ensure** that the investigation is proportionate to the seriousness and complexity of the allegation;
- **ensure** that the investigation is concluded without delay.

As the Investigator, you must also keep a full written record of the investigation and any meetings in line with [departmental procedures](#).

Where you require support from an HR Caseworker, you should contact the HR Casework Team for advice, or if an HR Case Manager is already assigned, you should liaise with them. Casework support can be accessed by phone or 


Planning the investigation

You should complete an investigation plan before commencing the investigation, based on the Terms of Reference given by the Decision Maker and focussing on what facts need to be established and what evidence collected. A suggested investigation plan template is available [here \(Word\)](#).

The plan does not have to be onerous or overly detailed – it is important that the investigation proceeds promptly – but the main points and issues should be covered to support the completion of a comprehensive investigation.

In the investigation plan, you should include:

- what the investigation is required to examine and who you will report back to;
- the estimated timescales you are working to, taking into account what the Decision Maker has included in the Terms of Reference;
- interviews with the individual who raised the complaint and the subject(s) of it;
- likely witnesses and how they will be interviewed or contacted;
- the potential for further witnesses coming forward or being identified during the investigation process;
- the involvement of other individuals; and
- any relevant wider issues, for instance other related investigations or issues of working practice or custom.

Planned timescales for the investigation should be both clear and practicable. A timeframe should be set out at the beginning of the process, based on a reasonable estimate, so that everyone knows what to expect. It is important that the investigation takes place in as short a period as possible, and **within 28 working days**.

Where any delay is likely to occur, you should discuss this as early as possible with the Decision Maker, who may consult with [HR Casework](#) for advice and support. The Decision Maker will be responsible for ensuring all parties affected are made aware of any delays and the reasons for this.

You should be clear which individuals need to be interviewed, but may find that other potential witnesses or sources of evidence come to light or are suggested as the investigation continues (for instance someone may suggest that evidence is taken from another source, e.g. CCTV). Care should be taken if discounting potential witnesses or evidence and clear reasons recorded for future reference. The individual under investigation should also be given the opportunity to suggest potential witnesses, whether they are the subject of a discipline or dispute resolution investigation. You must demonstrate that the gathering of evidence is necessary and proportionate to the scope of the investigation.

Informing those being investigated

You should inform the subject(s) of the complaint, in writing, that they are being investigated and the reasons for the investigation ([Example letter 6 \(Word\)](#)). This should be done **within the first 5 working days of the investigation**.

You must also recognise that this can be a particularly stressful time for individuals involved, and so it is important that you remind the individual of the support available to them, such as the [Employee Assistance Programme](#).

Preparing for the investigation interviews

Your role is to establish the facts and ensure a fair and thorough process has been carried out, and therefore it is important that you make enough time to prepare for each interview. The aim of the interview is to gather the facts to enable you to compile a report. You may therefore find it useful to prepare a list of some key questions to act as a prompt.

It is also sensible to arrange the interviews, as far as possible, to cover the events in chronological order. This will avoid the risk of having to re-interview someone because a new piece of evidence came to light later in the process.

You should invite the complainant ([Example letter 5 \(Word\)](#)), subject of the complaint ([Example letter 6 \(Word\)](#)) and witnesses ([Example letter 7 \(Word\)](#)) to interview, giving them at least five working days' notice to allow them time to prepare. All of these individuals can be accompanied by a workplace colleague or trade union representative if they wish. In particularly sensitive cases (for example, sexual harassment), and where an individual may need emotional support, it can help to allow the individual, regardless of whether they are the complainant, subject of the complaint or witness, to be accompanied at meetings by a close friend or family member. This is in addition to their Trade Union representative or work colleague.

The representative or 'friend' may advise and support the person being interviewed, but they should be reminded that they should not take any active part in the interview. Any breach should be noted and the individual warned that the meeting may have to be suspended if there is further disruption.

A request for a member of staff to attend an investigation interview represents a reasonable request and therefore a refusal to attend, or to repeatedly delay the meeting may represent a disciplinary offence.

Some individuals may be reluctant to provide evidence for an investigation. You should explore why an individual is reluctant to give evidence, provide reassurance and seek to resolve any concerns they have. You should advise any such individual

that the Employee Assistance Programme or a Trade Union representative can support them if it would be helpful to discuss their situation in confidence. However, an investigation is not reliant on any individual engaging in the process. Where a witness or other party refuses to cooperate, the Investigator may still report and produce findings based on the available evidence.

Documentary Evidence

In cases where there is likely to be documentary evidence it may assist if you arrange for the interviewee to copy and send you the documents in advance.

Note-takers

A note-taker is an essential part of the process as you are unlikely to be able to conduct the interview at pace while compiling notes. It is not intended that the notes be verbatim, but they should include sufficient detail of the relevant points to enable you to review the evidence. The notes should be available to you without delay so that the note-taker will need to be available to type up the notes immediately after the interview. Always check all notes for accuracy.

In cases involving sensitive or protectively marked documents or information, you should ensure that the note-taker has the appropriate security clearance.

Venue

As in any interview situation it is important to ensure that the venue is appropriate and that any adjustments have been accounted for. The venue must also be booked for sufficient time to allow for an overrun. It will be your responsibility to ensure that the interviewee is put at ease and that time is taken for comfort breaks and meals if required.

In cases where the interviewee requires an interpreter such as a signer, you will need to agree with them the best layout for the room. You should also bear in mind that signers should be given regular breaks which may need additional time or a second signer.

Whilst it is preferred that these interviews take place in person, for logistical and other reasons it may be necessary to conduct the interviews virtually. You should discuss arrangements (i.e. which online platform to use) with the interviewees and come to an agreement.

If you conduct these interviews virtually, it is important that both yourself and the

interviewees have access to a quiet, private space; this will ensure confidentiality and limit potential interruptions.

At the interview

A checklist on the interview process as well as tips and techniques such as listening skills and body language, is available from ACAS:

(https://archive.acas.org.uk/media/4483/Conducting-workplace-investigations/pdf/Conducting_Workplace_Investigations.pdf (PDF))

At the interview, you should outline:

- the purpose of the meeting;
- who is present and their purpose for being there, i.e. note-taker;
- the role of the Investigator;
- the need for confidentiality during the investigation;
- that the interviewee's witness statement will be used in an investigation report i.e. their statements will be recorded in writing. The statement will also be used in making a decision on whether there is a case to answer or not;
- who will see the interviewee's witness statement i.e. their statements will be made available to the Decision Maker, the complainant and the subject of the complaint;
- confirm that the interviewee will be given a note of the meeting for them to check and confirm that it is accurate.

During the meeting you should:

- ask open questions to establish the facts supplemented by closed questions to clarify a particular point;
- probe the interviewee without it being in an adversarial manner; and
- seek evidence that may substantiate the information provided.

At the end of the meeting you should:

- check if there is anything else the interviewee thinks is important before ending the interview;
- ask if there are other witnesses that they think should be interviewed and why;
- explain that they may need to be interviewed again; and
- explain that the interviewee will be provided with a copy of their witness statement within 5 working days of the meeting, for the interviewee to check and confirm that it is accurate.

Documentary Evidence

Interviewees who make reference to documents should be asked to produce them and each document should be given an identifiable reference number such as Initials xxx, which links the document to the individual. This is particularly important where different people are referring to the same document at a different stage in an audit trail. In a disciplinary investigation, which may be referred to the police, it is vital that continuity of evidence is maintained. In such cases you should seek further advice from the HR Caseworker.

Notes

The notes should summarise the interview, recording the relevant facts accurately. You may be more familiar with the case than your note-taker, so it is important that you prompt the note-taker to ensure that a particularly important answer is taken down in full and read back at the time.

It is best practice to pause occasionally and summarise the discussion to ensure that the interviewee is given the opportunity to agree with the emerging facts.

The notes should be typed up immediately after the meeting and presented to the interviewee for agreement, which should be in the form of a dated signature. Individuals should be able to propose amendments within 5 working days unless there are extenuating circumstances (e.g. a period of annual leave). Any amendments should be noted on the record.

Anonymising witness statements

An Investigator should try to avoid anonymising witness statements wherever possible, as an individual under investigation is likely to be disadvantaged as they will not be able to effectively challenge the evidence against them. Only in exceptional circumstances, where a witness has a genuine fear of reprisals, should an Investigator agree that a witness statement is anonymised. However even where it is agreed that identity can be withheld it is not possible to guarantee anonymity should the case progress to Employment Tribunal. Investigators should seek advice from [HR Casework](#) when dealing with requests for anonymity.

Failure to attend

In cases where the complainant and/or subject of the complaint fail to attend a meeting, you should make contact without delay to establish the reason for the

cancellation. They should be reminded that it is essential that they attend and that if they fail to attend on two occasions without a satisfactory explanation, you may have to report without the benefit of their side of the story.

Witness statements can be obtained without a meeting, for instance where a witness is ill or otherwise unable to attend a meeting, or is not an employee of the organisation. You should be clear in these cases what information you are seeking, provide clear questions to be answered, and give a suitable timescale for return of the statement (being mindful of the overall timescales that you are adhering to).

Analysing evidence

You should always remember that your role is to establish the facts of the matter. You should therefore not just consider evidence that supports the allegations but also consider evidence which may undermine it. Evidence should be analysed objectively both to question credibility and reliability and possible contradiction.

In cases where a search of a desk, cupboards or lockers is required as part of the investigation, you should seek advice from your HR Caseworker.

A search will normally be carried out with the consent of the member of staff and, where appropriate, in their and/or their Trade Union representative's presence and, in any event, in the presence of a witness, preferably a member of staff independent of the investigation.

After the interviews

After all the interviews have taken place and you have gathered all of the evidence, you should have a coherent picture in the form of notes (statements) of what happened.

You should aim to reach conclusions about what did or did not happen, even when evidence is disputed or contradictory. In these circumstances, you will need to consider whether, on the balance of probabilities, you could justifiably come to the conclusion that one version of the matter was more likely than another and explain why.

It is not unusual for different people to have differing recollections of the same events so, if after assessing all the evidence you find that there is missing evidence or there are dramatic inconsistencies, you may re-interview some of the witnesses to clarify particular points or new evidence.

You should bear in mind the need to conclude the investigation within 28 working

days, and if this has not been possible (for example, because further inquiries need to be made), you must inform the Decision Maker at the earliest opportunity.

Writing the investigation report

When you are satisfied that you have established the facts of the matter as far as reasonably possible, to reach a conclusion about what did or did not happen, a summary of your findings should then be translated into an [investigation report \(Word\)](#).

This report should cover all the facts that were (and were not) established, any mitigating factors (these should only be noted for further consideration by the Decision Maker, with no assessment given by the Investigator) and whether there is a case to answer or not. To ensure there is no risk of bias there should be a clear record of any evidence that has been excluded together with the reasons why this has been done.

You must ensure that any confidential information in the report (such as names of third parties who have not been interviewed as part of the process, and information such as dates of birth and addresses) is redacted prior to sharing the report with the Decision Maker. It is not necessary to redact the name of the individual giving the statement, unless an exception to give a witness anonymity has been made.

The report should record the following:

- the original Terms of Reference for the investigation (and any additions/amends to these);
- a summary of all relevant information obtained from the subject of the investigation, anyone raising a complaint and any witnesses;
- any information that could not be obtained or was discounted;
- any suggested witnesses who were not interviewed and the reasons for this;
- any doubts about evidence or credibility of statements;
- any contested facts;
- any unsubstantiated claims;
- whether an employee was aware that their actions might amount to misconduct;
- the reasons for any redactions that have been made in submitted evidence;
- a full summary of your findings and conclusions/recommendations based on the evidence obtained;
- a recommendation as to whether, on the balance of probabilities (meaning there is evidence that it is more likely than not to have occurred), there is a case to answer or not. This assessment should be made against each allegation that has been investigated. It is good practice to summarise the weight of evidence against each allegation and how that influenced your decision on whether or not there is a case to answer;

- where it has not been possible to decide whether there is a case to answer or not, the reasons why, for instance through a lack of evidence.

Annexed to the main report should be:

- copies of all statements; and
- copies of all other evidence, for instance relevant documents such as emails.

For consistency, please ensure this [investigation template \(Word\)](#) is used to summarise and complete the final report.

What happens after the investigation is completed

Once the investigation report is completed, you should submit this to the Decision Maker. It is not your responsibility to distribute the report to other parties.

The Decision Maker will check that the report meets the Terms of Reference for the investigation as set out in their original commission. If it does not, or if the Decision Maker thinks there are gaps in the evidence, they will set this out in writing and request any further information they require from you. In the interests of transparency any such correspondence should be made available to the complainant and/or subject of the complaint as part of the investigation report.

Once the report has been completed and submitted there will normally be no further involvement for the Investigator. Having completed a fair and objective investigation and submitted their report, any further involvement in the case might raise concerns of influence or a perception of potential bias.

There may be occasions where an Employment Tribunal (ET) claim has been submitted that is directly linked to the matter you have investigated. You may be asked to contribute to the process as a witness. A HR Case Manager will explain what information is required from you and how the ET process is conducted.

Costs associated with the investigation

In most cases there are unlikely to be any significant costs associated with the investigation. If you suspect there are likely to be any costs relating to travelling expenses or specialists, you should seek advice from your HR Business Partner. In most cases we would expect the costs to be paid by the Business Unit in which the complainant and/or subject of the complaint sits.

How to access support

Dispute resolution can be difficult and stressful for those involved. As the Investigator, you may be required to signpost those involved to support services available, but you should also remember that support is available for you too.

There are various sources of support available:

Line Manager	Can signpost to available support.
Fair Treatment Confidant	Offers listening, support and advice to staff who are feeling worried, anxious or stressed. This may be because of bullying or harassment, being accused of bullying or harassment or associated issues that are causing them concern.
Employee Assistance Programme (EAP)	Provide advice, counselling and legal services.
Mental Health First Aider	Can offer initial support through non-judgemental listening and guidance to those who are experiencing a mental health issue or emotional distress.
Workplace Early Resolution Helpline	The Early Resolution Helpline is a dedicated line for employees to contact HR Case Managers about workplace issues and concerns. It offers a safe environment to talk through issues and concerns, discuss options and identify the best early positive action.

HR Casework Service	Offers support and guidance throughout the investigation process.
Trade Unions	Members can seek advice from their representatives.
Staff Networks	Different networks may be able to offer additional support.
ACAS	ACAS provides free and impartial advice on a range of workplace issues. Access their website at acas.org.uk or call their helpline on 0300 123 1100.