



THE LONDON BOROUGH
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To: Members of the
LOCAL JOINT CONSULTATIVE COMMITTEE

Employer's Side

Councillor Russell Mellor (Chairman)
Councillor Nicholas Bennett J.P.
Councillor Stephen Carr
Councillor David Cartwright QFSM
Councillor Simon Fawthrop
Councillor Kate Lymer
Councillor Ian F. Payne
Councillor Michael Turner
Councillor Angela Wilkins

Staff Side and Departmental Representatives

Alice Atabong, Education, Care and Health Services (Housing)
Duncan Bridgewater, Chief Executives
Jackie Goad, Chief Executives
Stuart Henderson, Chief Executive (Registrars)
Nicola Musto, Environment and Community Services
Gill Slater, Unite Representative
Matthew Smallwood-Conway, ECS-Leisure and Culture
Kirsty Wilkinson, Education, Care and Health Services (SEN & Disability Service)

A meeting of the Local Joint Consultative Committee will be held at Committee Room 1 - Bromley Civic Centre on **THURSDAY 5 APRIL 2018 AT 6.30 PM**

Rooms have been reserved for Members and the Staff Side to meet separately at 6pm before the meeting commences at 6.30pm. The Assistant Chief Executive (Human Resources) will be available from 6.00pm to brief Members.

MARK BOWEN
Director of Corporate Services

A G E N D A

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

2 DECLARATIONS OF INTEREST

To record any declarations of interest from Members present.

3 MINUTES FROM THE PREVIOUS MEETING OF LOCAL JOINT CONSULTATIVE COMMITTEE HELD ON 25TH OCTOBER 2017 (Pages 5 - 12)

4 NOMINATION OF VICE CHAIRMAN

The Committee needs to appoint a Vice Chairman from the Staff Side.

5 UPDATE FROM DEPARTMENTAL REPRESENTATIVES**6 RISKS ASSOCIATED WITH CONTRACTING LOCAL AUTHORITY FUNCTIONS TO LARGE OUTSOURCING COMPANIES**

The Staff Side would like to ask the following question:

Unite has previously raised concerns regarding the impact of contracting out services on staff and on the Council itself in relation to the quality of service. Following the collapse of Carillion, and the problems faced by wholly commissioned Northamptonshire County Council, will the Council pause and take stock of the very significant risks of contracting local authority functions to large outsourcing companies, the financial health of which cannot be relied upon. How is such risk to be factored into the assessment of contracts?

7 THE ANNUAL PAY AWARD

The Staff Side would like to ask the following question:

Council staff are set to be poorer again this year as the Council imposes another year of pay cuts for staff with a sub inflation pay award of 2%. Nationally the pay offer of 2% has yet to be agreed. How do Members propose to honour commitments made to staff that their annual pay award would be better than those agreed nationally and that, as the number of directly employed staff fell, LBB would pay staff better?

8 FINDINGS OF THE RECENT EMPLOYMENT TRIBUNAL CASE

The Staff Side would like to ask the following question:

What is the timeframe for the Council to publish the findings of the recent Employment Tribunal and its proposed response to the findings?

9 LEVELS OF ILL HEATH BROUGHT ABOUT BY STRESS AND MENTAL HEALTH ISSUES (Pages 13 - 62)

The Council aims to be a ‘Dream Organisation’ for staff, and the Council’s mental Health Champion has made presentations to HR and to managers.

However, the reality faced by Bromley staff, is one of poor basic working conditions, aggressive HR processes (highlighted at the last LJCC) and high levels of work related stress. Will the Council undertake an audit of working conditions and staff wellbeing and supply information regarding the levels of ill health brought about by stress / mental health?

10 DATE OF NEXT MEETING

The date of the next meeting has been confirmed as 18th July 2018

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Agenda Item 3

LOCAL JOINT CONSULTATIVE COMMITTEE

Minutes of the meeting held at 6.30 pm on 25 October 2017

Present:

Employer's Side

Councillor Russell Mellor (Chairman)
Councillor Stephen Carr
Councillor David Cartwright QFSM
Councillor Simon Fawthrop
Councillor Keith Onslow
Councillor Angela Wilkins

Staff Side and Departmental Representatives

Duncan Bridgewater, Chief Executives
Jill Crawley, Unite
Jackie Goad, Chief Executives
Nicola Musto, Environment and Community Services
Gill Slater, Unite Representative

62 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies were received from Councillors Kate Lymer, Nicholas Bennett and Michael Turner. Councillor Keith Onslow attended as substitute for Councillor Bennett.

Apologies were received from Kirsty Wilkinson, Claire Harris, Kathy Smith and Mandy Henry.

63 DECLARATIONS OF INTEREST

There were no declarations of interest.

64 MINUTES FROM THE PREVIOUS MEETING OF LOCAL JOINT CONSULTATIVE COMMITTEE HELD ON 20th JUNE 2017

Gill Slater referred to section 57 of the minutes relating to 20th June 2017.

The minute read as follows:

'Ms Slater expressed the view that another fundamental issue existed that had delayed the signing of the contract, aside from the pension agreement'.

It was agreed that this should be amended to read:

'Ms Slater expressed the view that the second point, or another fundamental issue existed, that had delayed the signing of the contract, not dependent upon the pension agreement'.

Subject to the implementation of this change, the minutes were agreed and signed by the Chairman as a correct record.

Post meeting note:

The June minutes were re-published with this amendment on 26th October 2017.

65 UPDATE FROM THE DEPARTMENTAL REPRESENTATIVES

The Departmental Representatives presented a document for consideration and information. The document outlined various actions that had been suggested by staff to improve the organisation, and the progress that had been made in implementing the actions.

Jackie Goad stated that there had been a good improvement in general cleaning, and that a cleaning schedule had been established. Councillor Fawthrop noted that the lighting that was previously not working in committee room 1 was now working. He suggested that this was related to the fact that he had raised this issue with Amey at the Executive and Resources PDS Committee on 11th October 2017. He felt that it was important that LBB keep on top of the Amey contract, and that Amey should be pro-active as well as re-active.

Councillor Angela Wilkins raised the issue of the recent thefts of laptops and mobile phones. Evidence seemed to suggest that the thefts had been carried out by a contractor working for Amey. The matter had been referred to the Police. She wondered if Amey had been undertaking DBS checks, and that it would be a cause of concern if this was not the case.

The Director of Human Resources assured that theft was not normally a problem in LBB, and that even in this case, it was one person who was an employee of a contractor. The Director explained that it was not always lawful to undertake DBS checks, and it would depend on the nature of the post applied for. It was unlikely that a DBS check would be required for a cleaning post in the Council, and to carry out a DBS check when not required could constitute a breach of the individual's human rights. Amey could be asked to provide clarity on the process adopted in terms of asking for references.

Councillor Keith Onslow enquired if staff had secure spaces and if there was a clear desk policy. He expressed concern that confidential papers could also be at risk. The Director of Human Resources replied that managers and staff should make a risk assessment, and that staff did not have secure lockers. He mentioned that eventually staff would be moving into new Civic Centre accommodation and that the nature of the new accommodation would need to be taken into account.

The Committee heard that the card payment machine in the canteen was now working--a minimum spend of £5.00 was required.

Duncan Bridgewater informed that smoking shelters had now been installed. Dedicated shelters had been set up in St Blaise car park and by the Council

Chamber. A communications update would follow. A minimum number of 'no smoking' signs were required.

Idverde had been asked to quote for replanting the flower bed in the courtyard of the Stockwell Building.

Nicola Musto informed that she had been continuing her work relating to well-being and mental health at work. She had presented to the heads of Human Resources and would be presenting in due course to the Departmental Representatives and the Departmental Management Team. Her aim was to raise awareness of mental health issues and to de-stigmatise.

Ms Slater approved of the work being undertaken around mental health issues, and was glad that this had been presented to Human Resources. She expressed the view that it was important for HR to understand the mental health of staff and to acknowledge the impact on the mental health of staff going through HR processes (e.g. the ill-health procedures).

66 QUESTIONS ARISING FROM REPORT DHR15005--REVIEW OF EMPLOYEE REPRESENTATION ARRANGEMENTS

The Staff Side asked two questions that were based on report number DHR 15005.

This was a report that was looked at by the General Purposes and Licensing Committee on 26th March 2016. The report was entitled 'Review of Employee Representation Arrangements', written by the HR Consultancy Manager, Tammy Eglinton.

The report outlined proposals for restructuring the employee representation arrangements within Bromley Council. The report proposed to end the current secondment arrangement of staff into staff representation roles (i.e. the trade union and the staff side secretary roles) and to review the role and structure of the Departmental Representatives' Forum.

The first question was based on section 3.10 of the report:

Question 1:

Section 3.10 of the report notes:

'It is therefore proposed that a separate consultative/engagement forum for departmental representatives and a separate consultative/negotiation meeting with the trade unions are created'.

Unite would like to request an explanation of why a commitment to the GP&LC and to staff has not been organised?

The Director of Human Resources responded that meetings were taking place with the unions to fulfill all statutory obligations. These included meetings

related to pay, TUPE, and any other meetings where a legal obligation to hold the meeting was required. Additionally, the Director was in the process of setting up a schedule of regular meetings with the Trades Union representatives on a quarterly basis which stood outside of the required statutory ones. The meetings could be about anything that the Union would like to discuss. There had been a meeting recently that had discussed pensions. Separate meetings were taking place with the Departmental Representatives.

The second question was based on section 5.3 of the report:

Question 2:

Section 5.3 of the report states:

'Ceasing of the existing arrangements will require some funding to be set aside for staff side/trade union work, so it is proposed that the £46,060 is held centrally within the Chief Executive's budget until officers know how much of this is required, and then the balance will be offered up as a future budget saving'.

Unite would like to ask how much of this money has been spent compensating departments for staff absences while carrying out Trade Union Duties--especially the Library Service that has had the vast majority of absences.

There appeared to be some confusion from the Staff Side as to the purpose of the £46k that had been set aside. The Director clarified that this sum was related to the former post occupied by Glenn Kelly as Staff Side Secretary. The sum had been set aside while the transition process to the new representative system was developing. The sum was retained for year 1, and then recouped in central funding as a saving.

The Staff Side had understood the sum to allow for payments to compensate departments who were affected by the need to release staff to undertake Trades Union duties, most notably the library service. The Director advised that that had not been the purpose and that it would always be for the relevant department to bear the cost of releasing staff to carry out Trades Union duties.

Councillor Wilkins asked if the amount of time taken by staff for trade union activities could be quantified, and it was confirmed that this was the case. The Director advised that there would be a pay policy report that would be going to the GP&L Committee in March 2018. Trade Union activities undertaken by staff would be calculated in the document.

**67 QUESTION ARISING FROM THE MATTER OF
 REPRESENTATIONS DISCUSSED AT THE MEETING ON 20th
 JUNE 2017**

Minute 60 of the meeting held on June 20th 2017 discussed the matter of 'Representations'.

In the minutes it was noted that the Staff Side had asked if a review could take place to look at the way in which the Staff Side and Departmental Representative meetings were taking place, and if there was a possibility of a joint meeting.

Whilst not passed as a formal resolution, Councillor Carr stated that the matter of a review should be given serious consideration, and that the Council should be seen to be acting in a reasonable manner.

Unite asked if there has been any progress made, or time-table set for this consideration.

The Director clarified that the Council had previously agreed to have two separate arrangements for meeting with the Trade Unions and with the Departmental Representatives. This had in effect only been in place for less than two years, taking an inception date of November 2015. The Director expressed the view that the current arrangements had been working well, and would be reviewed in about a year. The Director stated that the new arrangements had been set up as the old arrangements had not worked.

Ms Slater disagreed with the Director and expressed the view that the meetings with the Trades Unions (other than statutory / issue specific) had not been taking place and that the previous arrangements where general staff matters were discussed had worked. She felt that certain recent issues like the problem of car parking space for staff, had not been dealt with in the correct manner, and could have been dealt with by a joint forum of the Unions and the Departmental Representatives.

The Director stated that the reasons for setting up separate consultative forums had been outlined clearly in sections 3.10 and 3.12 of the report.

Ms Slater expressed the view that the dep reps system had been set up to enable the Council to put across information down rather for staff to feed up.

She felt that the Council was in a weaker position for not taking advantage of the opportunities provided by a joint discussion forum—she regarded it as a missed opportunity. She stated that the matter had not been given serious consideration as had been promised, and that the previous system, in which trades unions and Departmental Representatives met together, had not been in operation for more than two years.

Councillor Carr commented that the current system had been operative for about two years and that next year would be the best time for a review. He pointed out that the Departmental Representative system had not been set up to be top down, but had been set up to provide a helpful staff forum, not a Trade Union like forum. Serious issues like the matter raised concerning staff parking would need to be dealt with daily, and could not wait for forums. This

was not a trade union issue. Councillor Carr was keen to see a good working environment, and felt that it was always important to be thinking how we could make things better. Many of the day to day issues had to be dealt with by office managers. Councillor Fawthrop declared that LBB should avoid restrictive practices and that the convening of meetings for the sake of having meetings should be avoided.

Councillor Onslow asked if the Departmental Representatives had been consulted on the matter, and would they be for or against joint forum meetings.

Ms Slater responded that the Union did not want meetings for the sake of having them, but rather that the Departmental Representatives forum already existed they were asking not to be excluded. They could bring a different voice to the table.

The Director advised that the Departmental Representatives communicated with all staff, and that staff had an email address that could be used to communicate issues and concerns to the Departmental Representatives.

Councillor Cartwright voiced the view that line managers should manage, and that there was a danger that too many forums could undermine line management.

Ms Slater opined that there was a fundamental difference between the Trade Union representatives, and the Departmental Representatives. She stated that the Trade Union was representative of members and that the Union representatives were elected by a democratic process. She suggested that staff would feel more comfortable making their concerns known through a TU rep than through the Departmental Representatives who by contrast were appointed by - managers or were managers. The Director of HR did not agree with Ms Slater.

Councillor Fawthrop responded that the point made by Ms Slater was superfluous as not all Council employees were members of the union. He expressed the view that Trade Union representatives were not always democratically elected and that in some cases a 'closed shop' environment existed to the nomination of representatives.

Ms Slater replied that this was not the case the process was wholly democratic and that any union member could be elected.

68 DATE OF NEXT MEETING

The next meeting has been scheduled for 5th December 2017.

The Meeting ended at 7.24 pm

*Local Joint Consultative Committee
25 October 2017*

Chairman

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Disciplinary Procedure

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Appendices

1. Conduct of Disciplinary Hearings
2. Disciplinary Action
3. Conduct of Disciplinary Appeals
4. Summary of Disciplinary Action

London Borough of Bromley

The Council's disciplinary procedure is to cover those cases where an employee's work conduct and performance is so significantly below the required standards that formal disciplinary action is judged necessary. It does not cover the normal day to day supervision where a line manager may have to counsel, train or otherwise discuss with an employee instances of poor performance. As part of normal supervision, a line manager may have to give an oral caution to an employee: this does not form part of the formal disciplinary procedure. Not until informal supervision, training and counselling has failed to produce satisfactory conduct, or is considered to be inappropriate in the circumstances of the case, should the formal disciplinary procedure be used. The line manager must make clear to the employee when the formal as opposed to the informal procedure is being used.

Disciplinary Procedure for Employees

Purpose and Scope

1. This procedure is designed to help and encourage all employees of the London Borough of Bromley achieve and maintain good standards of conduct, attendance and job performance. This disciplinary procedure applies to all employees covered by Bromley Council's Localised Pay and Conditions of Service, with the exception of:
 - (a) new entrants to local government service, who have not completed their six month probationary service. These employee do not have the right of appeal against disciplinary action taken against them. However, they may seek advice from the Director of Human Resources.
 - (b) trade union officials - although normal standards of conduct at work are expected of these staff, no disciplinary action beyond formal oral warning (see paragraph 10) should be taken until the appropriate branch secretary or full-time official has been informed.
 - (c) teachers, college lecturers and all other staff in schools and colleges are covered by the articles of government or rules of management of the educational establishment in which they are employed.
 - (d) chief officers - only the General Purposes and Licensing Committee may determine disciplinary action against a chief officer.

Rights of Representation

2. Employees have the right to be represented at all stages of the disciplinary procedure. They may be represented by a recognised trade union or another person of their choice.

Authority to Initiate Disciplinary Action

3. Each chief officer must define within their department the level of disciplinary action which each of their managers can take within the procedure.

Usually a:

- (a) line manager (defined as an employee's immediate line manager) may initiate disciplinary action under the procedure;
 - (b) senior manager (defined as the next or appropriate senior level of management above the line manager) is authorised to conduct formal disciplinary hearings, issue formal written and oral warnings, recommended dismissal or relegation.
 - (c) chief officer is authorised to hear first stage appeals against disciplinary action, and is authorised to suspend, relegate or dismiss an employee. In cases of dismissal, or suspension without pay, a chief officer should consult with the Chief Executive.
4. To ensure fairness throughout the procedure it is imperative that a different manager within a department carries out each of the different levels of disciplinary action. It is wise therefore to keep to the guidance described in 3 above.

Disciplinary Investigation

5. When a disciplinary matter arises which may require formal disciplinary action:
 - (a) the line manager must investigate the circumstances thoroughly and establish the facts promptly, normally within fifteen working days. They should take into account the statements of any available witnesses. A statement may also be requested from the employee being disciplined.
 - (b) When the facts are established the line manager will decide whether formal disciplinary action is appropriate. If it is decided to take formal disciplinary action the employee should be instructed to attend a disciplinary hearing, see 6 below.
 - (c) consideration should be given to the need to suspend the employee during the investigation - see paragraphs 18 to 20 below.

Disciplinary Hearing

6. The senior manager should send the employee a letter which
 - instructs the employee to attend a formal hearing
 - contains a written statement of the allegations against the employee
 - advises the employee that the hearing forms part of the Council's formal disciplinary procedure
 - advises the employee of his/her rights of representation (see paragraph 2)

7. This letter should be sent within five working days of the decision to have a formal hearing. The hearing will be chaired by a senior manager, other than the line manager initiating the action (details of the conduct of the hearing are set out in Appendix 1).

Disciplinary Action

8. The manager chairing the hearing must first decide at the hearing whether the case for disciplinary action has been established. This decision will be taken after they have heard the evidence presented by the line manager and the employee concerned.
9. The chair will then have to decide what action, if any, is reasonable in the circumstances and will consider the following:
 - the employee's disciplinary record: including whether previous relevant warnings or cautions have been given
 - the employee's age, length of service and general performance
 - any circumstances, for example, domestic problems which may have a bearing
 - any procedures which relate to the disciplinary offence
 - action taken in similar cases in the past
10. The possible disciplinary penalties are:

<u>Level of Performance</u>	<u>Possible Disciplinary Penalty</u>
Work performance below required standards.	An oral warning may be given which should be recorded on file.
Work which is persistently or seriously below standard.	A written warning may be given.
Misconduct of a serious nature; failure to work to required standards after previous warnings.	Final written warning, transfer or relegation to another post, dismissal with notice.
Gross misconduct.	Dismissal without notice.

11. Appendix 2 sets out examples of misconduct. In no case can an employee be dismissed without first having attended a formal disciplinary hearing.

Disciplinary Letters

12. The decision on the outcome of the disciplinary hearing will be given to the employee at the end of the hearing whenever possible and in any case in writing, within five working days of the hearing.

13. If a disciplinary penalty is to be imposed, the employee must be informed in writing of:
 - the nature of the disciplinary charge
 - a brief summary of the evidence presented at the disciplinary hearing
 - the nature of disciplinary penalty imposed
 - the standard of performance required in the future
 - the time scale within which the performance will be monitored and improvement assessed
 - arrangements for guidance, supervision or training, where appropriate
 - what will happen if work performance fails to meet the required standards
 - the opportunity to ask the chief officer for clarification of the action proposed
 - the employee's right of appeal
14. A copy of this letter should be sent to the employee and his/her representative and a copy retained on file. An employee may request, a year after the event and each subsequent year, the chief officer to endorse any recorded warning letter that it be disregarded in future. The chief officer will respond in writing to this request within five working days, giving reasons where this request is refused.

Dismissal and Relegation

15. The Chair, in the light of the evidence presented at a disciplinary hearing, may recommend that an employee should be dismissed or relegated. The employee should first be informed orally of this, the reasons for it and rights of appeal.
16. The chief officer will authorise the relegation and confirm his/her decision in writing to the employee. The chief officer will consult with the Chief Executive authorising dismissals. The Chief Executive will inform the employee in writing of the decision to dismiss. These letters should also contain the reasons for dismissal or relegation and the rights of appeal. ONLY IN CASES OF GROSS MISCONDUCT CAN AN EMPLOYEE BE DISMISSED FOR A FIRST BREACH OF DISCIPLINE.

Appeals

17. An employee who has been formally disciplined may appeal against the decision. In the first instance the chief officer will hear the appeal. An employee will also have the right for his/her appeal to be heard by a panel of Members if dissatisfied with the chief officer's decision but only in cases of dismissal, relegation or suspension without pay.
18. A request for an appeal must be made to the chief officer within ten working days of the receipt of the letter detailing the outcome of a disciplinary hearing. The conduct of an appeal is detailed in Appendix 3.

Suspension

19. A chief officer may decide, in view of the special circumstances of a case to suspend an employee on full pay prior to the disciplinary hearing. Such a suspension is not a disciplinary action in itself, but a means of providing a breathing space to enable investigations to be carried out. It will be used to protect the interests of the Council and the employee during the investigation and to ensure investigations are impartial.
20. A chief officer in consultation with the Chief Executive may suspend an employee without pay where appropriate. The chief officer in consultation with the Chief Executive may also convert a suspension from full to no pay as a result of the investigation taking place.
21. An employee would normally be suspended after the chief officer or his/her nominee has formally interviewed the employee and wherever possible with his/her representative.

The Chief Executive shall determine any questions of interpretation of this procedure.

NB. This is a jointly agreed procedure of the Local Joint Consultative Committee - Officers with the sole exception of the provision for the Chief Officer to suspend without pay, which is unacceptable to the Staff Side.

Appendix 1

Conduct of a Disciplinary Hearing

1. The Chair hearing the case will explain the procedures to be followed in the hearing.
2. The Chair will ask both the Council representative and the employee whether witnesses are to be called.
3. The Chair will read out the allegations set out in the written notification of the hearing.
4. The line manager will present the evidence against the employee and will call witnesses as appropriate.
5. The employee (and/or representative) may question the evidence presented by the line manager and witnesses.
6. The employee (or representative) will present their evidence and call any witnesses.
7. The line manager may question the evidence presented by the employee and witnesses.
8. The line manager may sum up his/her case.
9. The employee may then sum up his/her case.
10. The Chair will determine whether the allegations against the employee are true. If further investigations are necessary it may be appropriate to adjourn the hearing at this stage.
11. If the allegations are found to be true the employee will be told of this.
12. The Chair will then tell the employee what disciplinary penalty, or other action will be taken, see paragraph 9 of the disciplinary procedure. In cases where dismissal or relegation is proposed, the manager will inform the employee of his/her recommendation to the Chief Officer.

Appendix 2

Types of Misconduct Warranting Formal Disciplinary Action

THIS LIST SERVES ONLY TO PROVIDE EXAMPLES OF MISCONDUCT AND MAY BE ADDED TO AT ANY STAGE

1. Work performance below required standards
 - Unreliability - e.g. absenteeism, poor time keeping, unauthorised absence
2. Where work is persistently or seriously below standard
 - Failure to respond to previous oral warnings about poor performance
 - General neglect of duties
 - Refusal to obey reasonable instructions
 - Disregard of safety rules
 - Disruption of others' work
 - Insubordination
3. Misconduct of a serious nature, and/or failure to work to required standards despite previous warnings
 - As (2) above, where employee has failed to respond to previous warnings, training, guidance or supervision given.
 - Where the nature of disruption, insubordination etc. is of a more serious nature than in (2) above.
 - Misconduct which is considered insufficiently serious to justify dismissal, but serious enough to warrant a final written warning.
 - Sexual and racial abuse.
4. Gross Misconduct
 - Theft, fraud, deliberate falsification of records, fighting, assault on another person, deliberate damage to Council property, serious incapability through abuse of alcohol or drugs, serious negligence which causes unacceptable loss, damage or injury, serious act of insubordination, sexual offences, sexual misconduct at work, culpable lack of care towards clients, violent or abusive behaviour to the public or colleagues including serious sexual and racial harassment. It also includes any serious breach of confidence or deliberate unauthorised use or disclosure of any computer held or computer generated information from which an individual can be identified including software piracy.

Appendix 3

Conduct of Disciplinary Appeals

This procedure relates to the conduct of appeals to Chief Officers or Members.

However in the case of first stage appeals:

- a) the employee should write to the chief officer requesting an appeal within ten working days of receiving a formal disciplinary letter; and
- b) the Chief Officer will take the place of the panel of Members in hearing the appeal.

A clerk will be in attendance throughout proceedings to give advice on procedural matters only.

- i. When an employee decides to appeal to a panel of Members, he/she should inform the Chief Officer within 10 working days of receiving the letter detailing the Chief Officer's decision on the first stage appeal. (See paragraph 17 of the disciplinary code on rights of appeal).

Note: HR Consultancy set up Members Appeals Panels where cases progress to this stage. However, it will be the responsibility of departmental officers to present the Council's case to appeals panels, although advice and assistance may still be sought from Human Resources if required.

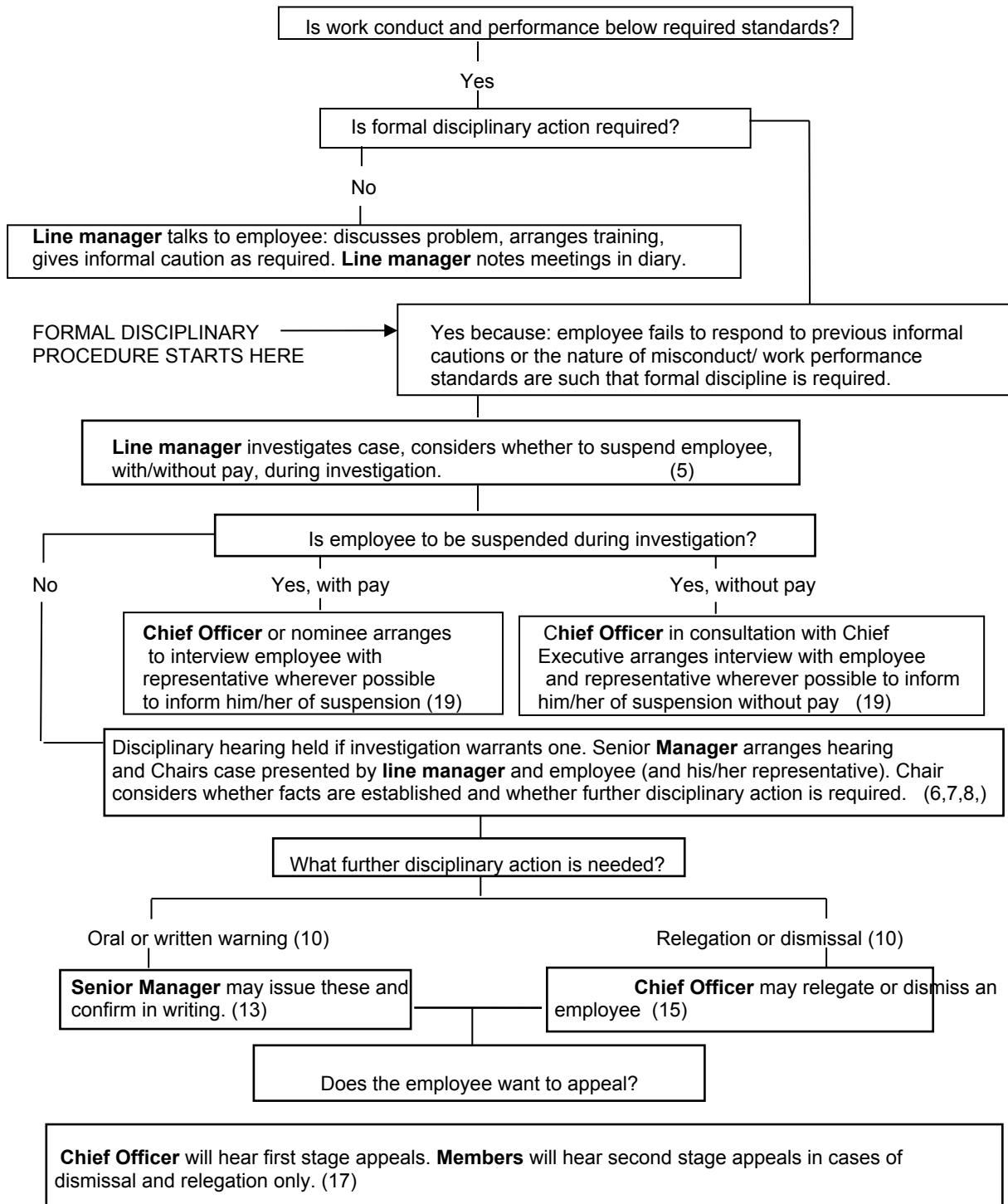
- ii. The appeals panel will consist of three Members who are not Members of the employing committee, and a secretary.
- iii. The hearing will be arranged as soon as practicable and no later than 10 working days after the expiry of the notice of dismissal (where given). At least five working days notice will be given of the date of the appeal hearing.
- iv. The employee may be represented by his/her trade union or another person. Witnesses may be called and documents produced at the hearing to support his/her defence.
- v. The local authority's representative(s) will put the management's case in the presence of the employee and will call any witnesses.
- vi. The employee (or his/her representative) may ask questions of the local authority's representatives and witnesses (if any).
- vii. The employee (or his/her representative) will put his/her case in the presence of the local authority's representative and will call any witnesses.

- viii. The local authority's representative may then ask questions of the employee, and witnesses (if any).
- ix. The Members of the appeals panel will then ask questions of the local authority's representative, the employee and their witnesses.
- x. The local authority's representative and the employee (or his/her representative) can sum up their cases, if they wish.
- xi. The local authority's representative and the employee, their representatives and witnesses will then withdraw.
- xii. The panel, with the clerk in attendance, will consider the evidence in private. They may recall either party to clear points of uncertainty on the evidence already given. If recall is necessary both parties are to return even if only one is concerned with the point-giving rise to doubt.
- xiii. The panel will give the decision to the local authority's representative and employee personally, or in writing, as appropriate.

Appendix 4

Disciplinary Action: Summary

This outline of possible disciplinary actions must be read in conjunction with the full disciplinary procedure. The numbers in each box refer to the paragraphs in this procedure.



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Guidance

Conducting workplace investigations

October 2015



About Acas – What we do

Acas provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace problems. Go to www.acas.org.uk for more details.

'Must' and 'should'

Throughout the guide, a legal requirement is indicated by the word 'must' - for example, to carry out a fair disciplinary procedure, an employer must conduct a reasonable investigation.

The word 'should' indicates what Acas considers to be good employment practice.

October 2015

Information in this guide has been revised up to the date of publishing. For more information, go to the Acas website at www.acas.org.uk. Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

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About this guide

This guide outlines the essential decisions and actions that employers of all sizes must and should make when deciding to conduct an investigation. It also provides important information divided into manageable steps for anyone who has been appointed to conduct disciplinary or grievance investigations.

The order of steps 3 and 4 may change depending on the facts and information required, and how an investigator thinks the matter should be approached. However, considering the relevance of each step to the matter being investigated will help an investigator to complete a thorough and fair process.

The guide is both a reference tool for those with experience of investigations and an introduction for those new to investigations. However, it is highly recommended that anyone appointed as an investigator should be trained in this area whenever possible.

Employees and their representatives can also use the guide to gain an understanding of how and why investigations should be conducted.

What is an investigation?

An investigation is a fact-finding exercise to collect all the relevant information on a matter. A properly conducted investigation can enable an employer to fully consider the matter and then make an informed decision on it.

Making a decision without completing a reasonable investigation can make any subsequent decisions or actions unfair, and leave an employer vulnerable to legal action.

The role of an investigator

The role of an investigator is to be fair and objective so that they can establish the essential facts of the matter and reach a conclusion on what did or did not happen. An investigator should do this by looking for evidence that supports the allegation and evidence that contradicts it.

In potential disciplinary matters, it is not an investigator's role to prove the guilt of any party but to investigate if there is a case to answer.

At a glance chart

STEP 1: Organisational preparation

- Decide if an investigation is necessary
- Establish terms of reference – the rules that the investigation will follow, including precisely what needs to be investigated
- Choose an appropriate investigator



STEP 2: An investigator's preparation

- Draft an investigation plan
- Identify who might need to be called to an investigation meeting
- Identify what evidence might need to be gathered – and how to get it
- Contact parties involved in the matter



STEP 3: Handling an investigation meeting

- Establish who can accompany employees at the meeting
- Plan what questions need to be asked
- Interview the parties involved and any relevant witnesses
- Handle reluctant witnesses or refusals to meet appropriately



STEP 4: Gathering evidence

- Arrange and agree witness statements
- Collect any relevant written records and documents e.g. timesheets
- Collect any relevant and appropriate physical evidence e.g. CCTV



STEP 5: Writing an investigation report

- Plan the structure of the report – remember there is a free Acas template available to use or adapt
- Report what is likely to have happened – the balance of probabilities
- Make a recommendation where requested



STEP 6: After an investigation is completed

- Submit the report and conclude the investigator role
- Retain the report for an appropriate period of time
- Ensure any recommendations unrelated to the matter are considered

Step 1: Organisational preparation

Deciding if an investigation is necessary

Incidents and issues will arise in any workplace and ensuring that they are dealt with fairly and consistently may mean that they need to be investigated.

In the first instance, an employer should consider whether a quiet word or informal action may be all that is required to resolve a matter. Most problems that arise can be settled quickly and without undue process.

For example...

Antonella is informed by an employee, that they have been on the end of some unwanted office gossip, which they think is now getting out of hand. After initially discussing the matter with the employee, Antonella decides that because they simply want the comments to stop, the best way to resolve this is by informally talking to the other employees.

Where informal resolution is not practical or possible there are a number of considerations that an employer should bear in mind when deciding if an investigation is necessary.

Considerations before making a decision	
Do any policies or procedures require an investigation? The policies and procedures of an organisation may obligate them to conduct a formal investigation on the matter under consideration.	For example: a company policy clearly states that all reported incidents of theft should be fully investigated.
Does the matter warrant further action? If an employer is not obligated to investigate the matter, whether one is necessary will often come down to the seriousness of the matter and what type of action may be warranted.	For example: if a company's policy isn't clear on how to approach an allegation of bullying, the incident is still likely to require some degree of investigation because it may warrant disciplinary action.
Will a preliminary investigation help? Where it is uncertain whether a full investigation is necessary or appropriate, an employer may benefit from trying to find this out first. Usually this would be limited to gathering appropriate evidence on the matter.	For example: a manager hears rumours that one employee in their team is purposely disconnecting calls from customers. A preliminary investigation could gather data on this and determine if there is a trend that may warrant a full investigation.

If an investigation is necessary, then an employer **should act promptly**. Unnecessary delay may cause memories to fade or give the perception of an unfair process. Importantly, an informal resolution of the matter should still be considered as an option at any stage of the process.

What is to be investigated?

When instigating an investigation, an employer should decide what the precise purpose and scope of the investigation will be.

Terms of reference should be created that clearly explain what the investigator's role and responsibilities are for this investigation. The terms of reference should spell out:

- what the investigation is required to examine
- whether a recommendation is required
- how their findings should be presented. For example, an investigator will often be required to present their findings in some form of investigation report
- who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed. This might be HR or a similar experienced and informed source

Why have clear terms of reference?

Clear terms of reference can...	<ul style="list-style-type: none">• help complete the investigation in a timely manner• clarify exactly what the investigator's remit is• clarify how they should present their findings• ensure all key facts are responsibly investigated• ensure an investigator only collects information and facts relevant to the matter• minimise any negative impact on staff morale caused by investigation meetings• minimise disruption to the organisation's daily business needs
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How long may an investigation take?

An employer should consult their policies and procedures to see if they contain suggested or required timescales for the investigation to follow. If no timescale is specified, an employer should provide a provisional timeframe within which the investigation should be completed. A complicated matter may take several weeks to conduct properly. A relatively simple matter may only require a small amount of investigation for it to be reasonable.

Conducting workplace investigations

Providing a provisional time-frame is helpful but an investigator should not be restricted by a set completion date. An investigator may find that the time-frame needs to be modified to enable them to investigate the matter properly. While an investigation should be completed as quickly as is practical, it also needs to be sufficiently thorough to be fair and reasonable. This is particularly important if the matter could result in disciplinary action or legal proceedings. Any delay to the investigation's conclusion should be explained to those involved and included in the report.

If new issues come to light...

If a new matter comes to light during an investigation, the investigator and the person they report to may need to agree changes to the terms of reference, or to authorise a further investigation. It will usually be preferable to incorporate any new matters into the existing investigation unless it will make an investigation overly burdensome or unduly complicated.

Deciding who will deal with the matter

In a potential disciplinary matter

Where possible, a different appropriate person should handle each required stage of the matter. Usually, roles needed for a disciplinary matter will be:

1. an investigator to gather the facts of the matter
2. a decision maker, in case the facts warrant further action, such as a disciplinary hearing. Where the option is available, this should usually be a member of staff that is more senior than the investigator
3. an appeal hearer, in case an appeal is raised against a disciplinary. Where the option is available, this should be a more senior member of staff to the decision maker. Sometimes, especially in smaller organisations, it may have to be someone at the same level as the decision maker or even the same person

For example...

An employer has a disciplinary policy that states, where possible:

- formal investigations will be handled by a line manager
- disciplinary hearings will be handled by line managers or a senior manager
- any appeal hearings will be handled by a director

In response to a grievance

Where a grievance has been raised, the roles of investigator and decision maker may be combined. In many cases, matters raised in a grievance may be resolved more satisfactorily if the person investigating the issue also hears the grievance.

Choosing an investigator

Who should be the investigator will often depend on the seriousness and/or complexity of the matter:

- In the majority of cases, where the matter to be investigated appears to be clear and the facts are not in dispute, the role of investigator may be carried out by an appropriate line manager or someone from HR for instance
- If the evidence to be investigated is more serious or complex (such as potential gross misconduct, discrimination or bullying) then, where possible, appointing someone more senior or experienced may be beneficial. However, an employer should be careful to ensure that there are still appropriate members of staff available if a disciplinary hearing (and appeal hearing) may be necessary
- In exceptional circumstances, it may be appropriate to appoint someone who is as detached from the matter as is practical, such as an external consultant. However, this needs to be carefully considered and any decision should balance the needs for fairness against a cost-effective and efficient investigation

Questions to consider when choosing an investigator:

- 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 time-frame?
- 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?

What is most important is that whoever is chosen to be the investigator **acts fairly and objectively**.

Conducting workplace investigations

Acas offers training courses for HR professionals and line managers on how to conduct an investigation. For further information, go to www.acas.org.uk/training

Keeping the matter confidential

An investigation should usually be kept confidential. Even if it becomes known that one is being conducted, the details of the investigation should be kept confidential wherever possible. Keeping the matter confidential can:

- reduce any negative impact to a party involved in the matter
- help to ensure that staff morale is not unnecessarily affected
- reduce the risk of witnesses discussing or agreeing what their evidence should be

For example...

Kasia receives a grievance from one employee alleging they are being bullied by another employee. As director of the organisation she considers the grievance and authorises an investigation to look into the matter further.

Kasia is wary that if the rest of the workforce hear about the allegation, one or both of the employees involved in the matter may be shunned by the rest of the workforce and staff morale could be affected. She therefore decides that keeping the matter confidential is essential while an investigation is conducted.

In a confidential investigation it is important to explain the need to maintain confidentiality to all staff involved. However, an employee should be allowed to discuss the matter with an employee representative where they have one. It should be made clear that if an employee breaches confidentiality an employer could view this as a disciplinary matter.

Possible temporary measures

Many investigations may be conducted without removing an employee from their typical working environment. On occasions, an employer may need to consider taking a temporary measure while an investigation is conducted.

Temporary transfer

Sometimes, rather than the more extreme measure of suspension, it may be more practical and productive to transfer an employee to a different area of work on a temporary basis. If tensions between certain employees within the organisation are high then a temporary transfer can stop them having to work together while the investigation is carried out.

In practical terms a temporary transfer will not always be possible. Where it is used, an employer should be reasonable and treat an employee fairly. An employer should only transfer an employee to a job of similar status in the organisation.

For example...

At lunchtime a manager intervened in a heated argument between Emma and Taz where both made several unsavoury allegations about the other. They are both extremely angry and both say that they won't work near the other.

The HR manager decides that while the incident is investigated it would be beneficial to temporarily transfer one of them to another part of the office. Emma has just started a new task whereas Taz is in the middle of an assignment that requires regular contact with his line manager. Therefore, it would be more appropriate to move Emma. This is explained to Emma and Taz but it is made clear that this is not a punishment and is just a temporary arrangement.

Suspension

In certain situations, an employer may decide that suspension with pay is necessary while the investigation is carried out. This may include where:

- working relationships have broken down
- the employee could tamper with evidence
- there is a risk to an employee's health or safety
- property or the business of an employee or the organisation may be damaged

Suspension with pay should only be used after careful consideration, as a last resort and should be reviewed to ensure it is not unnecessarily drawn out. It should be made clear that the suspension is temporary, not an assumption of guilt and not a disciplinary sanction.

For example...

Asha runs a construction company. One morning she is informed that two of her employees have been fighting on a work site. While Asha conducts an investigation to get the full facts she decides it is necessary to suspend both employees because:

- the actions of both employees may amount to gross misconduct
- it protects both employees from seeing the other until this is resolved
- no initial judgement is made on who may have been at fault

Criminal proceedings

Some matters might also warrant a criminal investigation. Usually, an employer may need to decide whether or not to involve the police. However, some employers will be obligated to raise some matters to the relevant authorities. For example, an organisation that works with children may have safeguarding procedures that require the local authority to be informed in certain circumstances. An employer should therefore check their policies and procedures before deciding not to inform the police.

If criminal proceedings do commence, an employer may decide to put their investigation on hold until the criminal proceedings have concluded. However, if they believe it reasonable to do so, an employer may still carry out their own investigation.

If an employer does continue with its own investigation, the investigator should be careful not to prejudice the criminal proceedings. An employee may also be less likely to cooperate if they believe it could harm their defence to the criminal proceedings. While taking this into account, an investigator should investigate the matter as thoroughly as is reasonable and, if required, make a recommendation based on the facts available to them at that time.

For further information, go to www.police.uk/information-and-advice

Step 2: An investigator's preparation

Draft an investigation plan

Creating an investigation plan can provide an investigator with a structured approach to follow. This can help an investigator focus on:

- what facts need to be established
- what evidence needs to be collected

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- completing the investigation within the provisional time-frame

An example of an investigation plan...	
Investigator	John Smith
Terms of reference	<ul style="list-style-type: none"> To investigate a grievance raised by Andrew A that Annie S has been harassing him in person and by email
Provisional time-frame	<ul style="list-style-type: none"> Started on 4 June 2015 Report to be completed by 19 June 2015
Policies and procedures to review and follow	<ul style="list-style-type: none"> Anti-bullying policy Grievance policy Disciplinary procedure
Issues that need to be explored/clarified	<ul style="list-style-type: none"> What actions does Andrew consider to amount to bullying and why? What are Annie's responses to the allegations?
Sources of evidence to be collected	<ul style="list-style-type: none"> Are there any witnesses to the matter? Witness statements CCTV? All emails sent between the two which the organisation can still access
Persons to be interviewed (including planned order of interviews)	<ul style="list-style-type: none"> Andrew A 8 June 9am Annie S 8 June 1pm Further names may be added following initial interviews
Investigation meetings further arrangements (When/where/notes to be taken by)	<ul style="list-style-type: none"> Meeting room 1 booked 8th June HR to be present as note taker Meeting room 1 provisionally booked for the 11, 12 June also
Persons to supply own statement	<ul style="list-style-type: none"> Alison K (internal IT expert): to provide evidence on email interaction between Annie and Andrew
Investigation meetings to be completed by	<ul style="list-style-type: none"> 16 June 2015
Collection of evidence to have been completed by	<ul style="list-style-type: none"> 16 June 2015
Further considerations	<ul style="list-style-type: none"> Annie is on paid suspension while the matter is being investigated

An investigator should be prepared to modify their investigation plan as and when further evidence comes to light that may be relevant to the investigation.

Acas has an investigation plan/checklist template that employers can use at www.acas.org.uk/templates

Check policies and procedures

An investigator should collect copies of any policies and procedures that may be relevant to the matter. Even if an investigator is already aware of the policies, they should re-read them to refresh their knowledge and ensure that correct procedures are followed wherever required.

For example...

Kareem is asked to conduct an investigation into a grievance that contains allegations of race discrimination. He re-reads the organisation's grievance and disciplinary procedure to refresh his knowledge and to ensure that he conducts the investigation as required.

He also collects the organisation's equality procedure because it may be important when considering if there is a case to answer regarding the allegations of race discrimination.

Identify possible sources of evidence

There is no exhaustive list that an investigator can rely on to know what sources of evidence they should collect. Each investigation will be different and the facts and information that need to be collected will also differ. When initially identifying what may be relevant an investigator should consider:

- the terms of reference and what they need to establish
- what sources of evidence may be available to establish the facts of the matter
- how the evidence could be collected
- whether there are any time constraints for collecting the evidence, such as a witness going away on annual leave or CCTV records that are usually deleted after X days

As the investigation progresses, other possible sources of evidence may come to light or become relevant.

However, an investigator should remember that they only have to conduct a reasonable investigation. They do not have to investigate every detail of the matter, only what is reasonably likely to be important and relevant.

For example...

Mia is asked to investigate a matter. The terms of reference state the investigator is to look into whether fraudulent expenses claims have been made. It is clear that the forms where the alleged fraudulent expenses were made and the related receipts will need to be collected as evidence.

Mia knows she could collect the employee's telephone records and computer browsing history. However, she decides these are not needed to establish the facts of this matter.

Identify possible parties relevant to the investigation

When individuals might be able to provide information relevant to the investigation, an investigator may interview them and/or ask them to provide a witness statement.

Where a large number of people witnessed the same incident, it will usually not be necessary to interview everybody. An investigator should interview some of the witnesses. If their accounts are consistent then an investigator may not need to interview other witnesses unless there are good reasons to believe they might have further information on the matter.

For example...

Satnam is investigating a dispute between two employees that happened during lunch in the staff canteen. Around 20 people were in the canteen at the time but Satnam decides that initially she will only interview the two people involved in the dispute and four witnesses to see if a consistent version of events is found.

While the two employees involved in the dispute have a differing version of events, all four of the witnesses give a very similar account. Satnam decides that she does not need to interview any of the other employees who were also present.

Deciding in what order evidence should be collected

The order in which evidence should be collected will change depending on the matter being investigated.

Where the matter is relatively straight forward, an investigator should hold some or all of the investigation meetings at an early stage of the investigation. In particular, if a person made a complaint or raised a grievance, an investigator should interview them first to ensure that they fully understand the matter.

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In a potential disciplinary matter, an investigator should also consider interviewing the employee or employees under investigation at an early stage. Doing this can help to establish what facts are disputed and allow an investigator to focus the rest of the investigation on these areas. Also, if they admit the allegations against them are correct it might remove the need to investigate the matter as fully as planned. However, their explanation of why the incident occurred may still need to be investigated.

Where there is considerable physical or written evidence, or the matter is very complex, an investigator should consider whether or not to collect other evidence before interviewing the employee or employees under investigation. Doing so may help them to fully understand the matter and help them to ask the appropriate questions at the investigation meeting.

For example...

Felix is asked to investigate an allegation into a customer service employee intentionally 'cutting off' callers. As he is unsure of what evidence there may be he decides that before talking to the person under investigation he should gather the phone records that the organisation has and hold an investigation meeting with an IT expert who can advise him about what the data reveals.

Doing this helps Felix to understand the allegation and what the data that has been collected reveals. He is therefore able to ask the employee under investigation questions that enable him to establish the full facts of the matter.

Arrange where meetings will take place

An investigation meeting should take place in a private room, where interruptions are unlikely to occur. Usually, meetings should be at the employee's normal place of work and during working hours. However, where a greater degree of confidentiality is required it may be better to hold the meeting outside of normal working hours or away from the organisation.

For example...

Abdul manages a team of 14 telesales staff who all work in the same open plan space as he does. The regular meeting spaces are all within sight of the staff and they are typically used for routine purposes staff are familiar with.

When Abdul raises a grievance alleging race discrimination, the investigator quickly establishes that any meetings held on site would be noticed and could quickly lead to gossip. In order to handle the investigation sensitively, the investigator arranges to meet Abdul on a different floor in the office outside of the main telesales working hours.

Contact relevant parties and their managers

Informing an employee they are under investigation

If an employee is under investigation, they should be informed in writing of the allegations against them and that an investigation will be carried out. They should be notified of who to contact if they have any questions during the investigation. This is typically the investigator, their manager, or HR.

In most situations, an employee should be fully informed when an investigation into their actions is instigated. An investigation should only be concealed if there are very good reasons, such as, because an employee may be able to influence witnesses or tamper with evidence.

For example...

Alison is asked to investigate an allegation relating to computer misuse. The individual under investigation works from home and Alison needs an expert to find out what exactly is on the computer. She therefore decides that she cannot inform the employee of the full reasons for the investigation until she has access to their laptop because they may be able to conceal or delete evidence.

After collecting the laptop there is no reason not to inform the employee of the investigation. Alison therefore notifies the employee of the allegations against them before an investigation meeting takes place.

Inviting relevant parties to an investigation meeting

An investigator should give any employee that they intend to interview advance written notice of their investigation meeting.

The invitation should include...

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- the date, time and place of the meeting
- the name of the investigator and what their role is
- the reason for the meeting
- an explanation that the meeting is only to establish the facts of the matter and is not a disciplinary meeting
- a request to keep the reason for the meeting, and any discussions that take place, confidential
- whether there is a right to be accompanied to the meeting
- that it may be a disciplinary issue if they unreasonably refuse or fail to attend the investigation meeting

Acas has developed a range of template letters that an investigator can use and adapt for their own needs at www.acas.org.uk/templates

Keep line managers informed

Throughout the investigation an investigator should also liaise with any line managers who are responsible for employees attending an investigation meeting. Keeping managers informed of arrangements is important. It will allow them to plan ahead and take steps to reduce any impact that the investigation may have on the organisation.

For example...

Kuljit is investigating an incident involving several members of a small helpline team. So that the matter has as little impact on customer service as possible she liaises with their line manager about when meetings will take place.

During discussions Kuljit finds out that the busiest time of the day is 12-2. She therefore arranges the meetings to take place outside of this time.

Step 3: Handling an investigation meeting

While investigation meetings will often be needed, some investigations will only require the collection of written and physical evidence. In these circumstances an investigator will not need to follow this step.

What is an investigation meeting?

An investigation meeting is simply an opportunity for an investigator to interview someone who is involved in, or has information on, the matter under investigation.

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An investigation meeting must never turn into a disciplinary meeting. Where disciplinary action may be necessary a separate meeting must be arranged.

Can an interviewee be accompanied?

In many cases it will benefit an investigation (and may be work place policy) to **allow an interviewee to be accompanied by a workplace colleague or trade union representative**. An employer might even consider allowing a personal friend or family member to accompany an interviewee if this is reasonable in the circumstances.

Allowing an interviewee to be accompanied can help for the following reasons:

- English may not be their first language and a companion may be in a position to help facilitate the discussion
- having someone there with them can make an interviewee feel more comfortable and more willing to talk openly about the matter
- a companion may be able to help an investigator manage the process more effectively by explaining steps being taken to an interviewee
- it can increase the confidence staff have in a credible process, and therefore may reduce the potential for appeal against any decision that follows

Is an employee entitled to be accompanied?

While there is no statutory right to be accompanied at an investigation meeting, an employee may still have a contractual right if not being accompanied would leave them unfairly disadvantaged.

It could also be required under the Equality Act 2010 as part of a reasonable access requirement for a disabled employee.

Where accompaniment takes place, it should still be the interviewee who answers an investigator's questions. However, an interviewee should be allowed to confer with their companion before answering.

Recording an investigation meeting

If investigation meetings are necessary, an investigator needs to plan how they will be recorded. Typically, an investigator may record the meeting themselves or have someone act as a note-taker.

Having a note-taker for the meeting can allow an investigator to focus on exactly what the interviewee says and consider what additional enquiries are necessary to establish the facts of the matter. A note-taker can also

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be used to read back answers given during the meeting and check that what has been recorded is agreed as being accurate.

What notes should be taken?

Notes taken at the meeting will usually become an interviewee's witness statement. The notes should therefore record:

- the date and place of the interview
- names of all people present
- an accurate record of the interview
- any refusal to answer a question
- the start and finish times, and details of any adjournments
- should be written without gaps, to avoid the accusation that gaps have been filled in after the meeting

The notes taken **do not need to record every word that is said** but they should accurately capture the key points of any discussion.

[Further information on witness statements is provided in Step 4](#)

Recording the meeting using an audio device may be done if the organisation's policy allows it or with the agreement of the interviewee. However, this can unnecessarily complicate the matter. Knowing they are being taped may be intimidating to an interviewee, making them less able to talk openly about the matter. It can also be time consuming because a transcript of the recording will usually need to be typed up so that it can be used as a witness statement.

In some instances, an interviewee may ask to record the meeting. Whether or not a meeting may be recorded is for the employer to decide. To ensure a consistent and fair approach is taken an employer should make its position clear in its policies and procedures.

A covert recording of an investigation meeting may be viewed as a misconduct matter or as a breach of trust and confidence.

Investigation meetings – the process

Investigation meetings are often difficult and emotional, especially for someone who raised a complaint or is under investigation. A courteous investigator following a structured process, by pre-planning their initial questions, will reduce unnecessary stress and help keep the interview on the right track.

The interview process	
Before the meeting takes place an investigator should	<ul style="list-style-type: none"> • establish how the interviewee may be able to help with the investigation and plan initial questions accordingly • book an appropriate time and place for the meeting • write to the employee inviting them to the meeting and detail any rights of accompaniment
At the start of the meeting an investigator should explain	<ul style="list-style-type: none"> • who is present and why • the role of the investigator • the purpose of the meeting • the need for confidentiality during the investigation • that the interviewee's witness statement may be used in an investigation report • who will see the interviewee's witness statement
During the meeting an investigator should	<ul style="list-style-type: none"> • ask questions to gather the facts of the matter • probe the interviewee without it being in an adversarial manner • record responses and any refusal to respond • seek evidence that may substantiate the information provided
At the end of the meeting an investigator should	<ul style="list-style-type: none"> • 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 • explain that the interviewee will be provided shortly with a copy of their witness statement for them to check and confirm that it is accurate
After the meeting an investigator should	<ul style="list-style-type: none"> • provide the interviewee with a copy of their statement and seek agreement that it is accurate • consider what the important facts from the meeting were and whether evidence already collected supports or contradicts these • consider whether the meeting suggested any further evidence needs to be collected or interviews arranged

Although an investigator should plan to only interview each employee once, as further facts and information are collected, it may become necessary to interview some employees again to clarify certain points.

Investigation meetings – tips and techniques

Practicing interview techniques through training and experience is vital for an investigator. While there is no substitute for this, the following tips and techniques will help supplement and refresh an investigator's knowledge, skills and approaches.

Listening

This is the vital part of conducting an investigation meeting. Effective listening will help an investigator get a better understanding of the people they interview and their points of view. Typical actions that an investigator should follow include:

- have a list of pre-planned questions to follow and tick off
- remain focused on the witness and the reasons for the meeting
- concentrate on exactly what the witness says
- be open minded to anything the witness may say
- acknowledge the witness' viewpoint
- listen for points that the interviewee avoids covering or giving details on
- allow the witness to finish their point before moving the interview on or asking a further question
- use silence to encourage the interviewee to elaborate on points

Body language

An investigator should think about their body language and consider how their actions may be perceived. Typical actions that can help to reassure an interviewee that the meeting will be conducted impartially, fairly and professionally include:

- facing the interviewee in a relaxed body posture
- being calm
- not folding arms, which can be intimidatory
- giving an appropriate amount of eye contact
- giving appropriate affirmative facial expressions and gestures, such as nodding

An investigator should be careful to avoid making judgements based on an interviewee's body language. Where there is some discomfort or unease, an investigator could ask, in a sensitive way, why the interviewee is acting in a particular way, remembering that an interview of this sort can be stressful.

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 approaches to use	
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: <ul style="list-style-type: none"> Explain to me exactly what you saw... Describe exactly what happened... Talk me through what you heard...
Closed / specific 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: <ul style="list-style-type: none"> 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?
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: <ul style="list-style-type: none"> When you say she was aggressive what exactly do you mean by aggressive? You mentioned earlier that X... tell me more about that.
Feelings questions: Can help to focus an interviewee on what is important to them and reveal their beliefs. However, they should be used sparingly as the meeting is mainly to establish the actual facts of a matter.	For example: <ul style="list-style-type: none"> What was important to you about that? What is your main concern about what happened?
Asking "What else?": Helps an investigator to probe deeper beyond the initial information provided. However, care needs to be taken to ask this sensitively.	For example: <ul style="list-style-type: none"> What else can you tell me about what happened? What else do I need to know about the matter?

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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: <ul style="list-style-type: none">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?
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There are some types of questions that can hinder an investigation and should be avoided wherever possible.

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: <ul style="list-style-type: none">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: <ul style="list-style-type: none">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: <ul style="list-style-type: none">Instead of "What is your role, do you like it and why?", ask each question individually.

Reluctant witnesses

Some employees may be reluctant to provide evidence for an investigation. An investigator should explore why an employee is reluctant to give evidence, provide reassurance and seek to resolve any concerns they have.

An investigator should try to avoid anonymising witness statements whenever possible. This is because an employee under investigation is likely to be disadvantaged when evidence is anonymised 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, if the matter becomes subject to legal

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proceedings, and it is necessary in the interests of fairness, an employer may be required to disclose the names of any anonymous witnesses.

For example...

Three employees approach Tayo, their manager and explain they have seen another employee taking items from the warehouse. They make clear that they do not want to be used as witnesses because they fear reprisals if it is discovered they informed management.

Tayo is asked by the directors to investigate the matter. The investigation shows that the items the employees claim were taken are missing. To try to avoid using anonymous evidence, Tayo collects the CCTV records from the warehouse. It reveals the employee had spent a lot of time near where the items were but does not show them or anyone else taking the items.

Tayo decides to investigate the reasons why the three employees do not want to be named as witnesses and discovers there have been several reports of intimidation by the other employee and their family members who also work there. He decides that there is a genuine reason for offering anonymity in these circumstances. However, he does make enquiries into each of the three employees to see if there may be any reason for them to fabricate their evidence.

Where an investigator decides that the circumstances do warrant an agreement to anonymity, an interview should be conducted and notes taken without regard to the need for anonymity. An investigator should then consider what, if any, parts need to be omitted or redacted to prevent identification.

Handling a refusal or failure to attend an investigation meeting

If an employee refuses to attend an investigation meeting, an investigator should try to find out why and see if there is a way to resolve the issue. It may be that they are unable to attend for a legitimate reason, such as illness, and an investigator could rearrange the meeting or ask the employee to produce a witness statement instead.

Where an investigator does not believe a legitimate reason has been given they could remind the employee that failure to attend a meeting may be viewed as refusing to obey a reasonable request and result in disciplinary action.

Employee relationships and motives

When interviewing a witness an investigator should be alert to their possible motives. They should make tactful enquiries into the relationship between the witness and any employee involved in the matter because this may add or detract from the validity of the witness's statement.

Usually, this can be done when interviewing the witness themselves and, where relevant, the person under investigation. However, in some circumstances an investigator may also decide it is necessary to ask other witnesses for their views on the impact a particular relationship might have.

An investigator should be careful about the tone and phrasing of their enquiries and remember that a witness is not under investigation.

Step 4: Gathering evidence

When gathering evidence an investigator should remember that their role is to establish the facts of the matter. They should therefore not just consider evidence that supports the allegations but also consider evidence which undermines the allegations. Once collected an investigator should objectively analyse each piece of evidence 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 evidence already collected?
- does it suggest any further evidence should be collected?

For example...

While conducting an investigation Dawinder is told by an employee under investigation that they were not working on the day of the alleged incident.

When trying to find evidence that supports or contradicts this claim, Dawinder remembers that the buildings security require employees to scan a pass to get in and out of the building. She makes enquiries into whether any data is stored. With the employee's card number she is able to collect records that show the employee's card had been used on the day of the incident. This may call into question the reliability of the information provided by the employee.

Witness statements

A witness statement will usually be a signed copy of the notes from an investigation meeting. An interviewee should be given a copy of their statement taken at the investigation meeting to check that they agree it is accurate. This should be done as soon as possible after the meeting so that memories are still fresh. Once the interviewee has checked the document they should sign the statement confirming it is an accurate reflection of the conversation.

An investigator may want a witness statement to be typed up. However, when the original notes from the meeting are clear they could be given to the interviewee immediately after the meeting.

An interviewee should be allowed to amend their statement but should sign any amendments they make to the original document. Where changes to the statement are made that an investigator believes contradict what was said at the meeting, it may be necessary to note this and include both the original statement and the amended statement in the report.

If an interviewee refuses to sign their statement, an investigator should try to find out why and resolve the issue. If a resolution cannot be reached, an investigator should include the statement in their report while acknowledging that the interviewee refused to confirm that it was an accurate reflection of the meeting.

When might a statement be provided without a meeting?

An investigator may sometimes decide that a witness statement can be supplied without a meeting in circumstances such as:

- if a witness is not a worker
- when the facts required from a witness are very simple
- where a witness is ill and unable to attend an investigation meeting

An investigator should provide a reasonable deadline for completion and ask the witness to answer specific questions or to include in their statement:

- their name and, where applicable, job title
- the date, place and time of any relevant issues
- what they saw, heard or know
- the reason why they were able to see, hear or know about the issues
- the date and time of statement
- their signature

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A witness statement supplied in writing will be of limited use where there are doubts about the witness's account or the witness needs to be probed for further details.

Written records and documents

An investigator should collect any documentation that may be useful to establish the facts of the matter, such as attendance sheets/records or paper copies of electronic material. These types of documentation can help an investigator corroborate or contradict other evidence collected and can highlight areas that an investigator needs to explore further at an investigation meeting.

For example...

Nico is investigating a grievance that alleges a manager has been bullying an employee. He held an investigation meeting with the employee who claimed the manager had called him several derogatory names in private but had also been aggressive to him in emails.

Nico collects all emails between the two for the last three months and analyses the discussions.

At an investigation meeting with the manager, Nico is able to explore the content of several emails and probe the manager about the tone and language used.

Physical evidence

There may be physical evidence, such as CCTV or computer and phone records relevant to the investigation, which can be obtained lawfully and without breaching the employee's employment contract.

If physical evidence is collected, an investigator should document what it is, how it was collected and what it reveals. This can make it easier for an investigator to refer to the evidence at the conclusion of the investigation. Any physical evidence gathered should also be retained in case it needs to be viewed again at a later date.

Using CCTV and other personal data as evidence...

Policies and employee contracts should clarify whether or not an employer may use CCTV recordings and/or personal employee data as evidence in disciplinary and grievance matters.

Where this is not the case, an employer should only use such evidence where it is not practicable to establish the facts of the matter through the collection of other evidence only.

Some physical evidence that could be collected may be difficult or expensive to collect. An investigator should seriously consider how any relevant evidence could be collected and then decide whether the associated costs mean that it would be reasonable to collect or not.

For example...

Adil is investigating an allegation of theft. He speaks to five witnesses, and four claim to have seen Jill putting the item in her bag. Upset, Jill claims at an investigation meeting that she has never been in the room where the item was taken from and demands the organisation get fingerprint analysis to prove she was in there.

Adil discusses this with the director. They decide the cost of paying for an expert to do this would be unreasonable.

Considerations if searching personal possessions

A search should only be conducted in exceptional circumstances where there is a clear, legitimate justification to search an employee or their possessions. Even if an employee's contract allows an employer to conduct a search, they will usually need an employee's consent for it to be lawful.

Where an investigator needs to search a desk or cupboard that an employee uses, the employee should be invited to be present. Where they are unable to be present, a manager should be present to witness the search.

If an employee refuses to be searched when their contract allows this, it might amount to unreasonable behaviour and/or jeopardise evidence that could potentially be used to exonerate them.

However, an employee may have a legitimate reason to refuse and an investigator should be sensitive to other factors that may explain a refusal. An investigator should therefore explore why an employee has

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refused to be searched and seek to resolve this rather than assume that a refusal implies guilt.

Where it is believed that a criminal offence may have been committed, an employer may call the police as they have wider powers to search individuals.

All requests and refusals should be recorded.

Step 5: Writing an investigation report

Once an investigator believes they have established the facts of the matter as far as is reasonably possible and appropriate, they will usually need to produce an investigation report that explains their findings. While a written report is not always necessary, many investigations will benefit if its findings are recorded in writing.

An investigation report should cover all the facts that were and were not established, and whether there were any mitigating circumstances that also require consideration. To exclude any information may leave an investigation open to accusations of bias and filtering evidence to suit their 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.

Writing a report – Structure

A consistent structure to writing each part of the investigation report should ensure that all issues raised in the terms of reference are covered and all of the investigation's findings are included.

An investigation report should include...	
Introduction	<ul style="list-style-type: none">name and job title of the person who authorised the investigationname and job title of the person who conducted the investigationa brief overview of the circumstances that led to the investigationthe terms of reference of the investigation and if they were amended
Process of the investigation	<ul style="list-style-type: none">how the investigation was conductedwhat evidence was collectedwhether any pieces of evidence could not be

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	<ul style="list-style-type: none">collected and whynames and job titles of all witnesses and why each witness was relevant to the matterwhether any witnesses could not be interviewed and whywhere a witness statement has been anonymised explain why and provide any details of enquiry into their character and background
The investigation findings	<ul style="list-style-type: none">summarise the findings from all relevant documentssummarise the key evidence from each witness statementwhat facts have been establishedwhat facts have not been establishedwhether there are any mitigating factors to considerwhether there is any other relevant information to consider
Conclusion of report (if required)	<ul style="list-style-type: none">recommendation based on all evidence collectedany other recommendations related to the matter
Supporting documents	<ul style="list-style-type: none">copies of all documents and witness statements collected and referred to in the report should be included and clearly referenced

Acas has developed an investigation report template that an investigator can adapt for their own needs at www.acas.org.uk/templates

Writing a report – Tips and techniques

When writing an investigation report an investigator should remember who will read the report once it is completed and that this will often include an employee who raised a grievance or an employee under investigation. The report should therefore:

- be written in an objective style
- avoid nicknames and jargon
- use same form of address for all people referenced
- use appropriate language and keep simple wherever possible
- stick to the facts of the matter
- keep it concise
- explain any acronyms used
- include all evidence that was collected

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 (see below)
- **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

The balance of probabilities

An investigator should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. In these circumstances an investigator will need to decide whether, on the **balance of probabilities**, they could justifiably prefer one version of the matter over another and explain why.

Unlike criminal law, an investigator conducting an employment investigation does not have to find proof beyond all reasonable doubt that the matter took place. An investigator only needs to decide that on **the balance of probabilities** an incident is **more likely to have occurred than not**.

Malicious complaints

A further issue that an investigator may sometimes need to consider is whether an employee raised a malicious complaint. An investigator should consider what the evidence collected suggests but the employee should usually be given the benefit of any doubt. If an investigator decides the complaint was clearly malicious they could recommend formal or informal action, as set out below.

Requests to make a recommendation

It is common for an investigator to be asked to make a recommendation. However, an investigator should restrict their recommendations to only suggesting whether any further action may be necessary or beneficial. In most circumstances an investigator should recommend **formal action, informal action or no further action**.

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An investigator **should not** suggest a possible sanction or prejudge what the outcome to a grievance or disciplinary hearing will be.

Formal action recommendation: The formal action an investigator could recommend will usually be:

- to initiate a disciplinary hearing
- changes to an organisation's policy or procedure
- further investigation into other matters uncovered

Informal action recommendation: The informal action an investigator could recommend will usually be:

- 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 recommendation: Although an investigator may find there is no further action necessary they could recommend that counselling, mediation or another form of support may be beneficial to the parties involved and the organisation.

Step 6: After an investigation is completed

Concluding the role of an investigator

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

- **Discussing the report in person:** sometimes an investigator may need to discuss their findings with the individual or panel they report to. In disciplinary matters, the focus of discussion should only be to decide whether any further steps are necessary. The investigator should not discuss what sanction might be imposed if a disciplinary charge is established
- **Attending the disciplinary hearing:** an investigator may be required to attend a subsequent hearing. However, they should only be there in a fact giving capacity. They should not be there to give their opinion or present the case against the employee
- **Input into policy or procedure review:** depending on the needs of the organisation it may be appropriate to use the expertise the investigator has accumulated to advise on amending or updating policies and procedures

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If an investigator does continue to be involved in the process for any other reason there may be a perception that the investigation was biased and this should be avoided wherever possible.

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. This is usually the person or group who would be conducting the disciplinary process. If their decision differs from the investigator's recommendation, the reasons for this should be written down and included as an addendum to the report.

Recommendations unrelated to the investigation matter

During an investigation an investigator may identify other issues that, while outside the scope of the terms of reference, may still require action. An investigator should note what other matters may require further action and report these to the employer in a separate document for them to consider.

For example...

While investigating a grievance about a request to work part-time, Ibrahim realises the company's flexible-working policy needs to be updated to bring it in line with the law. He also discovers that recently promoted managers have not been trained in handling flexible working requests as the organisation's policy requires.

Ibrahim does not include these issues in his report as they are not relevant to the actual matter being investigated. However, in a separate document, he does recommend that the policy urgently needs reviewing and that several managers should be given training.

Clarifications and further enquiries

On some occasions an issue may be raised during a formal hearing which may not appear to have been considered during the investigation. The hearing may therefore need to be adjourned while the decision maker chairing the hearing discusses and clarifies the matter with the investigator.

Only in exceptional circumstances will there be a need to reinvestigate the whole matter. However, a decision maker may ask an investigator to investigate any new issues put forward or investigate it further themselves.

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Approaching the matter in this way means that a deficiency in an investigation may be rectified or a new argument can be fully considered before the hearing is reconvened and a final decision is made.

Keeping investigation reports

There will usually be a need to retain investigation reports for a period of time. Where the report includes details about individuals, (including witnesses) it is important to keep the report securely stored and restrict access only to those individuals who need it and to be aware of data protection or other legal requirements.

If an individual wishes to see a report they believe they have been named in, they have a right to see any parts of the report that contains information about them, or that is reliant on information that they have provided. However, they should not be allowed to see private information belonging to other individuals.

The report should be securely disposed of once it becomes irrelevant or out of date.

For more information on data protection, go to www.ico.org.uk

Further information

Acas learning online

Acas offers free E-Learning on a wide range of topics including, Discipline & Grievance and Conflict Resolution. For more information go to www.acas.org.uk/elearning

Acas training

Acas offers a conducting investigations course that is carried out by experienced Acas staff who work with businesses every day.

Go to www.acas.org.uk/training for up-to-date information about our training and booking places on face-to-face courses.

Also, Acas specialists can visit an organisation, diagnose issues in its workplace, and tailor training and support to address the challenges it faces. To find out more, see to the Acas website page Business solutions.

Acas guidance

Bullying and harassment at work: a guide for managers and employers

Bullying and harassment at work: a guide for employees

Code of practice on discipline and grievance

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Guide on discipline and grievances at work

Guidance on discrimination is available at www.acas.org.uk/equality

Additional help

Employers may be able to seek assistance from groups where they are members. For example, if an employer is a member of the Confederation of British Industry or the Federation of Small Businesses, it could seek its help and guidance.

If an employee is a trade union member, they can seek help and guidance from their trade union representative or equality representative.

Keep up-to-date and stay informed

Visit www.acas.org.uk for:

- Employment relations and employment law guidance – free to view, download or share
- Tools and resources including free-to-download templates, forms and checklists
- An introduction to other Acas services including mediation, conciliation, training, arbitration and the Acas Early Conciliation service
- Research and discussion papers on the UK workplace and employment practices
- Details of Acas training courses, conferences and events.

Sign up for the free Acas e-newsletter. The Acas email newsletter is a great way of keeping up to date with changes to employment law and to hear about events in your area. Find out more at:

www.acas.org.uk/subscribe

The Acas Model Workplace. This engaging and interactive tool can help an employer diagnose employment relations issues in its workplace. The tool will work with you to identify areas of improvement you can consider, and will point toward the latest guidance and best practice:

www.acas.org.uk/modelworkplace

Acas Helpline Online. Have a question? We have a database of frequently asked employment queries that has been developed to help both employees and employers. It is an automated system, designed to give you a straightforward answer to your employment questions, and also gives links to further advice and guidance on our website:

www.acas.org.uk/helplineonline

Acas Helpline. Call the Acas Helpline for free and impartial advice. We can provide employers and employees with clear and confidential guidance about any kind of dispute or relationship issue in the workplace. You may want to know about employment rights and rules, best practice or may need advice about a dispute. Whatever it is, our team are on hand. Find out more: www.acas.org.uk/helpline

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Facebook - <https://www.facebook.com/acasorguk>

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