

The background of the slide features a photograph of a coastal town with red-roofed buildings nestled at the base of a steep, rocky cliff. The sky is blue with scattered white clouds. A large, semi-transparent blue rectangle is overlaid on the right side of the image, serving as a backdrop for the title text.

GUIDANCE ON CARRYING OUT AN INVESTIGATION

Investigations for Discipline and Grievance: step
by step

Step 1: Deciding if there needs to be an investigation

When there is a possible workplace disciplinary or grievance issue, the employer should find out all they reasonably can about the issue. This is known as an 'investigation'.

An investigation is to:

- i. see if there is a case to answer
- ii. make sure everyone is treated fairly
- iii. gather evidence from all sides
- iv. help the employer to see what should happen next

At any stage the employer can still look at whether:

- i. the formal procedure needs to carry on
- ii. the issue can be resolved informally instead

Following a fair procedure

To protect everyone involved in a disciplinary or grievance case, the employer must make sure they follow a fair procedure. The investigation is an important part of this.

If the employer does not carry out a reasonable investigation, any decisions they make in the disciplinary or grievance case are likely to be unfair. This could risk legal action.

Investigations are covered by the Labour Regulating Authority Code of Practice on disciplinary and grievance procedures, which is the minimum a workplace must follow. A workplace might have its own policy or procedure.

If a disciplinary or grievance case reaches the Labour Regulating Authority, it will look at whether the employer has followed the Code of Practice in a fair way.

Step 2: Preparing for an investigation

If an employer has decided to investigate a disciplinary or grievance issue, they should start as soon as possible. This is to make sure they're treating the employee fairly. For example, people might remember a situation more clearly the sooner they're asked about it.

Who can carry out the investigation

Where possible, the employer should get somebody who's not involved in the case to carry out the investigation, for example another manager or someone from HR. This is to keep things as fair as possible. In smaller businesses, the employer might have to do it themselves.

In a disciplinary case

The employer should think about who will handle matters if further action is needed. Where possible, a different person should handle each step of the disciplinary procedure that's needed:

- i. the investigation
- ii. the disciplinary hearing and outcome
- iii. the appeal hearing (if an appeal is raised)

Where possible, the employer should assign a more senior person to handle the disciplinary hearing and outcome than the person assigned to the investigation.

In a grievance case

For a grievance investigation, it is usually best for the person hearing the grievance to investigate the issue.

Making an investigation plan

The employer and the person investigating, if there is one, should start by making in writing an investigation plan.

This can include:

- i. what needs to be investigated
- ii. who is carrying out the investigation
- iii. anyone who needs to be spoken with ('witnesses')
- iv. any sources of evidence, for example work records, emails or CCTV recordings
- v. any time limits, for example CCTV footage being deleted or staff going on leave
- vi. timeframes
- vii. policies or workplace guidelines to follow
- viii. whether the person investigating is expected to give recommendations at the end of the investigation
- ix. setting out the importance of confidentiality
- x. any other relevant points or information

A clear plan can help to:

- i. make the investigation as quick and easy as possible
- ii. make clear exactly what needs to be done

- iii. make sure the process is full and fair
- iv. avoid negative effects on staff or the business

Telling the employee

The employer or person investigating should tell the employee with the disciplinary or grievance issue as soon as they decide to open an investigation. This is unless the employer thinks there is a risk that the employee might tamper with evidence or influence witnesses. In this case, the employer should wait until there is less risk of this.

When the employer tells the employee they are opening an investigation, it's a good idea for them to explain:

- i. why they're carrying out an investigation
- ii. who will be carrying it out
- iii. what they're going to do
- iv. that they'll need to talk to any witnesses
- v. how long it could take
- vi. what will happen next, for example a meeting
- vii. that everything will be kept confidential

Employers can use the letter templates at **Annex** for:

- i. disciplinary cases – informing an employee they are the subject of an investigation
- ii. grievance or disciplinary cases – inviting an employee to an investigation meeting

An investigation can be stressful for the employee in either disciplinary or grievance cases. It's important for employers to consider the wellbeing and mental health of their employees and offer support where needed.

Deciding whether to suspend an employee in a disciplinary case

It's normally best for an employer to avoid suspending an employee under a disciplinary investigation. If necessary, the employer should make any other arrangements rather than suspension. For example, the employee could work somewhere else in the organisation temporarily.

The employer should only consider suspension during an investigation if they believe it's needed to protect any of the following:

- i. the investigation
- ii. the business
- iii. other employees
- iv. the employee under investigation

If suspension is necessary, the employer should:

- i. explain to the employee the reason for their suspension
- ii. make clear it does not mean they believe the employee is guilty
- iii. still pay the employee in full throughout their suspension
- iv. keep the suspension confidential wherever possible
- v. keep the suspension under close review
- vi. make sure it only lasts for as long as necessary
- vii. explain the employee's responsibilities during their suspension, for example to not contact

Colleagues

- viii. name a person, such as their manager, the employee can contact if they have any concerns
- ix. keep regular contact with the employee throughout

Looking after employees' wellbeing and mental health

Being investigated and the subject of disciplinary proceedings can be very stressful, so it's important that employers consider the wellbeing and mental health of their employee.

Looking out for the employee's wellbeing and offering support can help prevent:

- i. mental health issues arising
- ii. existing mental health issues getting worse
- iii. absence

For example, as well as regular communication, the employer could arrange any meetings in a more private and comfortable location if this would help an employee.

Step 3: Carrying out an investigation

In a disciplinary or grievance investigation, the person investigating should do their best to:

- i. be fair and objective
- ii. follow any policies or guidelines the workplace might have
- iii. get as much information on the case as is reasonable
- iv. not try to prove guilt, but get balanced evidence from both sides
- v. keep the case confidential

In a disciplinary procedure, the person investigating should be finding out if there is an issue that needs to be addressed, not trying to prove guilt.

How long an investigation needs to take

While an investigation should be completed as quickly as possible, it always needs to be thorough and fair. Some investigations might take longer depending on the case and how many people need to give information.

For example, a simple case might only take a day to gather enough information, whereas a more complicated case could take several weeks. The employer or person investigating should set a reasonable timescale and tell the employee.

If it's found that more time is needed during the investigation, this should be allowed for. Any delays should be explained to anyone involved and written in the investigation report.

Getting physical evidence

The person investigating should get all the information they reasonably can and need for the case. They should work out what physical evidence is needed based on:

- i. what's laid out in the investigation plan
- ii. what sources of information they can use
- iii. any time limits, for example records getting deleted

More evidence might come to light as the investigation goes on, so the person investigating should allow for this.

Types of physical evidence could include:

- i. emails
- ii. paperwork
- iii. receipts
- iv. computer records
- v. phone records
- vi. CCTV recordings
- vii. attendance records

The person investigating must consider the ways they can get information and respect the employee's right to privacy

The person investigating should keep a written record of how and why they got any evidence.

Holding investigation meetings

In both disciplinary and grievance investigations, the person investigating might also need to get information from:

- i. the employee
- ii. other employees involved ('witnesses')
- iii. other witnesses, for example clients or customers

The right to be accompanied

An employee or worker should be allowed to be accompanied by a relevant person ('companion'):

- i. in a grievance procedure: to any meetings
- ii. in a disciplinary procedure: to a meeting or hearing that will give or confirm a formal warning or other disciplinary action

In a disciplinary investigation meeting

If the employee or worker has the right to be accompanied, they must choose their companion from one of the following:

- i. a work colleague
- ii. a member of any employee representative committee

Employers must make reasonable adjustments for disabled employees. This might mean allowing someone else to attend, for example a support worker or someone with knowledge of the disability and its effects.

Employers can, but do not have to, allow companions who do not fall within the above categories. For example, some employment contracts might allow for a professional support body, partner, spouse or legal representative.

Absence from an investigation meeting

If the employee with the disciplinary or grievance issue needs to go to an investigation meeting but does not attend, the person investigating should rearrange the meeting. The employer or person investigating should see if it would help to make other arrangements.

For example, if the employee is off with stress and is worried about coming to the workplace, they could hold the meeting somewhere else. If the employee is too sick or keeps refusing to attend, the person investigating will need to look at all other evidence and make a reasonable decision.

They could also look at:

- i. the seriousness of the disciplinary or grievance issue
- ii. any rules the workplace has about not attending investigation meetings
- iii. how the workplace dealt with similar cases in the past
- iv. getting a medical opinion on whether the employee is fit to attend the meeting (with the employee's permission)

The employer might decide they need to carry on with the investigation without the employee. If so, the employer must:

- i. carry out the investigation in as full and fair a way as possible
- ii. tell the employee

Step 4: If there are witnesses

Witnesses can give important evidence that might help decide the outcome of a disciplinary or grievance case. If there's anyone with information about the discipline or grievance issue (a 'witness'), the person investigating can ask them to write it down (a 'witness statement').

The person investigating can also have a meeting with a witness to ask them what they know or saw. Someone should take notes during the meeting. At the end of the meeting, the witness should sign the notes and these can also form a witness statement.

Taking a witness statement

The person investigating might decide a witness can give a statement without having a meeting, if the witness:

- i. is not an employee, for example a customer or client
- ii. only needs to give very simple information
- iii. is ill and cannot come to an investigation meeting

The person investigating should ask the witness to write:

- i. answers to specific questions, where necessary
- ii. their name and, where applicable, job title
- iii. the date, place and time of any relevant issues
- iv. what they saw, heard or know
- v. the reason why they were able to see, hear or know about the issues
- vi. the date and time of writing their statement
- vii. their signature

The witness should have reasonable time to give the statement.

Talking to a large number of witnesses

If a large number of people witnessed the same incident, the person investigating should:

- i. talk to some of the witnesses
- ii. check whether they're broadly saying the same thing

The person investigating does not have to talk to all witnesses, unless either of the following apply:

- i. they feel they're not getting enough information
- ii. there are significant differences in what the witnesses say

Making records

The person investigating can make audio recordings of interviews or assign a person to take notes, depending on:

- i. what is most appropriate or possible
- ii. what the organisation's policy or rules allow (if any)
- iii. if the person being interviewed agrees

Sharing information and confidentiality

When getting information from a witness, it's a good idea to get their consent to be able to share it if necessary. For example, in case other people working on the investigation need to look at the information.

The employee under a disciplinary investigation or who has raised a grievance case should be given a copy of any written evidence, including witness statements.

If someone believes they've been named in a report, they should have the right to see any parts that:

- i. have information about them
- ii. depended on information they gave

They should not be allowed to see private information about other people.

The employer should keep investigation reports for a while, in case there are any questions in the future. How long they keep reports might be set out in a workplace policy but it should not be any longer than is necessary.

If the report includes people's details, the employer should store it securely and only allow access when necessary. The report should be securely disposed of once it's no longer needed or is out of date. For example, it could be shredded.

Step 5: What happens after an investigation

If the employer or person investigating feels they need more information, they can go back and investigate again.

They should:

- i. try to do this in reasonable time
- ii. tell the employee about any delays completing the investigation

Making an investigation report

When there's enough information and the investigation is finished, the employer should have a written report. The employer should share this report with the employee.

If the employer had a person carrying out the investigation for them, that person can give recommendations for next steps, if this was agreed in the investigation plan.

Giving recommendations

If the person investigating is to give recommendations at the end of the investigation, they should recommend one of the following:

- i. formal action
- ii. informal action
- iii. no further action

Formal action

Formal action could be:

- i. to initiate a disciplinary hearing
- ii. changes to an organisation's policy or procedure
- iii. further investigation into other matters that were found

Informal action

Informal action could be:

- i. training or coaching for parties involved
- ii. counselling for parties involved
- iii. mediation for parties involved
- iv. notification that further similar action might end in disciplinary action

No further action

The person investigating might still suggest anything that could help the workplace and the people involved, for example:

- i. counselling

- ii. mediation
- iii. another form of support

Carrying on with the disciplinary or grievance procedure

Now they have more information, the employer should check again if the issue can be resolved informally.

After an investigation, the employer might find there's no evidence to carry on with the disciplinary or grievance procedure. In this case, they should end the procedure and tell the employee in question there'll be no further action.

If the employer finds there's an issue that cannot be resolved informally, they should carry on with the procedure for either:

- i. discipline: the disciplinary hearing; or
- ii. grievance