



# **Managers Guide: Conducting Disciplinary Investigations**

## Introduction

A fair and thorough disciplinary investigation is a key part of any disciplinary procedure, as an inadequate investigation may make the subsequent disciplinary decision unsound and may render any dismissal unfair.

The nature and extent of the investigation will vary depending on the circumstances and the seriousness of the issue being investigated. The purpose of the investigation is to establish the facts, not to make any judgements or decisions, and it is important to look for evidence that supports the employee's case as well as evidence against.

Wherever practical, the investigation should be carried out by a manager who is not involved with the incident under investigation (the investigating officer), and a different manager to the person who will carry out the disciplinary hearing (the disciplinary officer).

## Key Principles of a Fair Investigation

**Purpose of the Investigation:** The objective is to gather facts, not to determine guilt or impose disciplinary action. This should be done through impartial and objective processes.

**Compliance with Procedures:** Follow internal disciplinary policies and ensure alignment with recommended best practices, such as those outlined in relevant codes of practice.

**Separation of Roles:** Ideally, the investigator should not be involved in decisions about disciplinary action and should be unconnected to the events under investigation to avoid bias.

**Timeliness:** Be prompt and efficient, avoiding unnecessary delays.

## Responsibilities of the Investigating Officer

As the investigating officer, your responsibilities are to:

- Establish the nature of the allegations being made against the employee
- Establish the evidence to support the allegations
- Establish the facts quickly before memories fade
- Carry out investigatory meetings where appropriate
- Gather witness statements where appropriate
- Recommend whether there is a case for holding a formal disciplinary hearing

Always make sure that the investigation takes place as soon as possible after the alleged incident, so that evidence cannot be disturbed and information can be obtained from witnesses before their memories fade.

Although it is always necessary to carry out an investigation, in some cases such as persistent poor timekeeping, this will simply be a case of gathering evidence. However, other matters may require you to gain witness statements or carry out an investigation meeting with the employee.



# Steps in the Investigation Process

## 1. Appointing the Investigating Officer

- Select someone unconnected to the case to ensure impartiality.
- The officer may be a manager, HR representative, or external professional if the case is complex or sensitive.

## 2. Defining the Scope

- Clearly outline the questions to be answered and the issues to investigate.
- Identify the evidence required, such as witness accounts, documents, or digital records.

## 3. Considering Suspension

- Assess if suspension with pay is necessary, such as in cases of potential harm or risk of tampering with evidence.
- Emphasize that suspension is a neutral step, not an assumption of guilt.

## 4. Preparing for Interviews

- Employee Interview: Inform the employee in advance, giving them time to prepare. Share details about the purpose of the interview and clarify that it is part of fact-finding.
- Witness Interviews: Arrange individual interviews with witnesses, ensuring confidentiality is maintained.

## 5. Addressing Attendance Issues

- If an employee fails to attend, seek to understand their reasons and consider rescheduling. If non-attendance persists, document the attempts made and proceed based on available evidence.

## 6. Collecting Evidence

- Gather all relevant documentation, such as emails, records, or CCTV footage, while respecting privacy and data protection laws.
- Consider if any external sources, such as customers or third parties, can provide relevant evidence.

# Suspension

It may be appropriate to suspend the employee whilst the investigation takes place. Suspension may be appropriate in circumstances where gross misconduct is suspected, or where the employee may interfere with the investigation, destroy evidence or influence witnesses.

However, you should seriously consider whether suspension is necessary under the circumstances, and if you do decide to suspend, the suspension must be on full pay and should be as brief as possible.

Any suspension should be confirmed in writing and it should be made clear to the employee that the suspension does not form any disciplinary action against them or indicate any assumption of guilt.



## Witness Statements

You will need to establish who was involved in, or witnessed the incident or events which led to the investigation taking place. You should arrange to meet with each witness individually and ask them to explain, in their own words, what took place.

Avoid making assumptions or snap decisions. It is important to understand exactly what happened, and this is not always easy as different witnesses may give different versions of events. Be careful not to lead the witness, but ask open and probing questions to establish what they actually saw or heard and encourage them to stick to the facts.

Following the meeting, a witness statement should be typed up confirming what the witness said, and they should be asked to check the statement for accuracy, make any amendments they feel necessary and then sign and date the statement.

In some cases, employees may be reluctant to provide evidence against a colleague. In such cases it may be appropriate to anonymise the statement before it is used, by blanking out information which could identify the witness.

There may be occasions where witnesses are not employed by the company. In these circumstances, they should be asked if they could assist with your investigations by providing a written witness statement. It may also be appropriate to check CCTV evidence.



## Documentary Evidence

You should collate copies of any documentation which is relevant to the case.

There is no finite list of the sort of documents which may be relevant, as this will vary according to the circumstances and the allegation being investigated, but it may include absence records, e-mails and letters relating to a specific chain of events, or policies and procedures which have been disregarded.

## Investigatory Meeting with the Employee

Depending on the circumstances, it may be necessary to hold an investigatory meeting with the employee, to determine their version of events. This may be particularly appropriate when the evidence against the employee consists mainly of witness statements.

Unless your company disciplinary procedure says otherwise, there is no legal requirement to carry out an investigatory meeting with the employee, so you should consider whether, given the circumstances, it is appropriate to hold one.

If an investigatory meeting does take place, there is no statutory right for the employee to be accompanied by a work colleague or trade union representative.

If you do hold an investigatory meeting, the purpose of the meeting is to establish the employee's version of events. You should give the employee notice that the meeting will take place and allow them adequate time to prepare for it. The meeting should not make any judgement of the employee or recommend or result in any disciplinary action, it is purely a fact-finding meeting.



## Recommending Appropriate Action

Once you have carried out the investigation, you should review the evidence to determine whether there is a disciplinary case to answer.

If there is, the evidence should be passed to the disciplinary officer for action, or if there is no case to answer this should be confirmed in writing to the employee:

### Preparing the Report:

- Compile all evidence and findings in a clear and logical format.
- Document the reasoning for each conclusion, linking it to specific evidence.

### Recommendations:

- Where appropriate, include a recommendation on whether the matter should proceed to a disciplinary hearing.

### Communication:

- If no further action is warranted, inform the employee in writing and lift any suspensions.
- Provide the employee with all evidence and documentation if the matter progresses to a hearing, ensuring adequate preparation time.

## Confidentiality and Record-Keeping

Treat investigation records as confidential, storing them securely and in compliance with data protection regulations.

Retain records only for as long as necessary.

## Checklist for Managers

- Appoint an impartial investigator.
- Clearly define the scope and objectives of the investigation.
- Assess the need for suspension and document the decision.
- Notify the employee and witnesses about interviews, providing necessary details.
- Gather and review all relevant evidence, ensuring adherence to legal and procedural requirements.
- Compile a thorough report, linking findings to evidence.
- Ensure all parties involved are informed of the outcomes promptly.



## Get in touch

This document is intended as a guide. If you have any concerns regarding its content, or for further information about conducting disciplinary investigations, or anything else to help make managing your HR easier then please get in touch. We'd love to help.

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Simply contact our team on



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