



Welcome to the latest edition of IntERact. In this quarterly newsletter we are focusing on Investigations into misconduct and a recent case of interest .

CONDUCTING INVESTIGATIONS

What type of investigation?

The decision as to the level and type of investigation process that is required will usually be taken by the line manager in consultation with HR, a time consuming investigation process may not be necessary if the employee has admitted misconduct at the start. The investigator should give the case highest priority and will usually complete an investigation within 10 working days of receiving the case. In exceptional cases this deadline may be extended if the investigator needs more time to gather all the facts, particularly if key participants are absent. Always examine the appropriate company document which holds the disciplinary or grievance procedure. This will aid the planning of the timetable and resources required for the investigation.

Before you begin

- Establish timescales for the investigation
- Determine the allegations/grounds of the issue
- Write an action plan including resources required
- Ensure that the investigating officer is impartial and unbiased
- Ensure there is a suitable appeal manager available should the employee appeal

Step-by-step investigations

Investigations should ideally be tackled in four stages:

- Planning
- Establishing facts
- Evaluating
- Reporting

Planning

Effective planning will help you define the limits of the investigation and keep you focused on what is relevant. In a more complex case a plan should involve the following:

- Determining the allegation

- Drafting an action plan
- Considering resources
- Collating and recording information

Establishing Facts

- Gather documents and background information and consider gathering the following:
 - * Background information on the incident
 - * Documentary and photographic evidence as required
 - * Written statements of witness evidence
- Conduct investigation interviews.
 - * When investigating an alleged breach of conduct, interviewing the employee who is the subject of the investigation first may save time. It may help you establish which facts, if any, are disputed. However, you may learn things during other interviews that you need to discuss with the employee, requiring a second interview.

- Keep records of all Interviews
- Maintain confidentiality

Evaluating

- Ensure that all the relevant documentation and evidence has been read
- Review and weigh up all the evidence
- Ensure that the facts have been established and conduct further investigation if necessary
- Determine if there is sufficient evidence to warrant the employee being invited to a disciplinary hearing

Reporting

Complete a confidential report and submit it to the directing manager with all collated information and evidence. Be prepared to discuss the report further

**Tips on investigating misconduct
(Check your own Company Policy)**

1	An employee is not entitled to know in advance the investigation issues or have copies of evidence already obtained.
2	The employee will not (unless given this right in the Company's policies) be entitled to be accompanied.
3	The purpose is to establish facts and determine whether or not the employee may have committed acts of misconduct
4	No formal disciplinary action will result from an investigatory meeting. A report is submitted stating the conclusion
5	The Investigating Officer should ask the employee whatever questions are appropriate to determine whether or not suspected misconduct took place
6	The Investigating Officer is not required to give the details of specific allegations or evidence already gathered - but may do
7	Inform the employee about when a decision will be made on whether or not the employee will face a disciplinary hearing
8	Investigating Officer recommends either proceed to a disciplinary hearing or no further action taken. Inform the employee

London Underground Ltd v Ferenc-Batchelor and Harding v London Underground Ltd

The right to be accompanied at a disciplinary hearing is triggered where the hearing is one that could result in:

- the administration of a formal warning to the worker;
- the taking of some other action in respect of the worker; or
- the confirmation of a warning issued or some other action taken.

In this case the employee was called to a meeting that could result in what the employer's disciplinary procedure called an "informal oral warning" being issued, but was not permitted to be accompanied.

The Employment Appeal Tribunal held that an "informal" warning will be regarded as a "formal" warning for the purposes of the right to be accompanied if it has the characteristics of a formal warning.

In this instance the warning would be confirmed in writing, continue to have effect for a specified period of time, be part of the worker's disciplinary record and be taken into account in the event of a similar offence: it was therefore a formal warning.

Sources - A variety of resources are researched and utilised in constructing the newsletter including; Acas, BERR, CIPD and other internal and external HR and legal resources as necessary.

Howarth and Parker v HM Prison Service

Two male prison officers who were subjected to disciplinary proceedings when a female colleague was not, were discriminated against on grounds of sex, rules an Ashford employment tribunal (Chair: G W Davis) in Howarth and Parker v HM Prison Service.

According to the tribunal, the respondent allowed its commitment to combat the anti-female culture in the prison to cloud its judgment.

David Howarth and Dennis Parker are both employed as prison officers at HMP Standford Hill in Kent. In the early part of 1997 an investigation unit, known as the Chaucer team, was set up to investigate allegations of corruption and serious misconduct at prison establishments in the county.

Following investigations into a number of allegations, including sexual harassment, made against the two applicants, the Chaucer team recommended that both applicants face disciplinary proceedings.

The team also investigated a number of allegations of misconduct made against Karen McElvie, who was also a prison officer at Standford Hill, but none were found proven and no recommendation was made as to further action. Both applicants claimed sex discrimination.

Upholding their claim, the tribunal found that the respondent, and in particular the Chaucer team, were all "acting from the best possible motives and endeavouring to combat what they saw as an anti-female culture at Standford Hill".

However, in so doing, the tribunal found that "their good intentions did cloud their judgment when looking at the allegations against Karen McElvie". No complaint could be made against the Chaucer team in its conduct of its investigations or its recommendations in respect of the applicants.

However, when comparing the team's approach to the applicants with its investigation of the allegations against Ms McElvie, there were inconsistencies and omissions. For instance, certain allegations against Ms McElvie were not investigated in detail because no specific written allegations had been made. But in the case of the applicants, the team investigated allegations of sexual harassment without first receiving any written specific allegation.

In the circumstances, the tribunal was "driven to the conclusion" that had Ms McElvie "been a man and had similar allegations been levelled against him then the allegations would have been pursued with much more vigour, as indeed they were in the cases of allegations against Howarth and Parker.

Useful Data

Statutory Maternity Pay	effective April 2009	£123.06 per week
Statutory Sick Pay	effective April 2009	£79.15 per week
Minimum Wage		
workers 22 years and older	effective October 2009	£5.80 per hour
workers 18 to 21 years	effective October 2009	£4.83 per hour
workers 16 to 17 years	effective October 2009	£3.57 per hour
Recent survey data of general interest		
Average Absence Cost	CIPD survey 2009	£692 per employee per year
Average Level of Absence	CIPD survey 2009	7.4 days per employee per year
Employee Turnover Rate	CIPD Survey 2009	15.7%
Average Recruitment Cost	CIPD Survey 2009	£4,000 per vacancy filled

If you have any questions or comments relating to this newsletter then please contact us on **0845 270 1148** or email

Interact@outsetuk.com.

The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking, or refraining from taking, any action.

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