

## FACT SHEET

# Conducting an Investigation

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Issues sometimes arise in the workplace that warrants exploration by way of a formal investigation. The investigator will investigate the issues in accordance with a document authorised by your company such as an investigation plan, policy / procedure or a terms of reference.

During such an investigation, employees may be interviewed to determine what they know of the issue under investigation. The investigators will interview people who may have something to contribute. People who are interviewed may also suggest other stakeholders that could be interviewed.

### PARTICIPATION IN AN INVESTIGATION

Companies can direct an employee to participate in an investigation and to answer questions put to them by an authorised investigator. A failure to cooperate in an investigation may result in a disciplinary process being initiated.

### EVIDENCE

The investigator will look for those who can provide direct evidence of what actually occurred. If investigators are provided with hearsay evidence, they will seek to speak to those people who actually saw or heard the incident rather than rely on what someone else told them they saw or heard. It is the responsibility of all individuals to ensure that the information provided to investigators is only what they know to be true (not what someone told them).

All information must be provided honestly and in good faith.

The investigator will gather all the evidence regarding the issue and if allegations have been made about an individual, the investigators will usually interview that person last to ensure they can respond to all the information gathered about the alleged conduct.

### FINDINGS

Once the investigators have gathered all the information, they will analyse that information to determine, on the balance of probabilities, whether the alleged conduct did in fact occur. Balance of probabilities is a measure that says:

***"It is more likely than not that the alleged conduct did occur."***

## PROCEDURAL FAIRNESS

Procedural fairness is also commonly referred to as natural justice. It will be provided to an individual by ensuring that no action that materially affects someone as a result of the findings of an investigation will be implemented without giving such an individual the:

- opportunity to hear the substance of the allegations;
- opportunity to respond to the substance of the allegations;
- an unbiased decision-maker to determine whether or not the allegations can be substantiated, not substantiated or dismissed.

Anyone adversely affected by the investigations process can access the companies employee assistance program.

## WHEN SHOULD THE PERSON BEING INVESTIGATED BE TOLD ABOUT THE ALLEGATIONS?

The right to be informed about the substance of allegations or adverse comment, and the opportunity to be heard, must be given before any final decision is made, or a memorandum, letter or the like is placed on the person's file.

The point in time at which the person who is the subject of the complaint is informed of the allegations will depend on the circumstances of each case.

However, the following should be considered:

- There may be circumstances where initial inquiries or the early stages of an investigation will reveal that there is not case to answer. In such circumstances it may not be necessary to inform the person complained about at all, if they are unaware of the investigation. However, if anything is to be recorded on their file, they may need to be told.
- In circumstances where a complaint alleges wrongdoing, but the identity of the alleged wrongdoer is unknown, no-one should be notified of the allegations in that complaint unless there is a particular person named.
- Where the person who is the subject of the complaint is to be interviewed, it can be appropriate to delay informing them of the substance of the allegations until the interview, if it appears that evidence could be tampered with or witnesses approached. Specifically, where there is risk that:
  - Documents may be destroyed
  - Records may be modified
  - Collusion may take place, particularly where more than one person is involved
  - A vital witness is in a position to be pressured or influenced

There are no hard-and-fast rules about how and when to inform a person of the substance of any allegation/s. However, in accordance with natural justice / procedural fairness, you must advise the respondent (person complained about) is made aware of the nature of the allegations and provided an opportunity to respond to the allegation/s.

## CONFIDENTIALITY

Confidentiality is a duty of care not to disclose information that may be sensitive or damaging to the interests of another, whether or not the other person has specifically asked for the information to be kept in confidence.

It is the responsibility of everyone involved in an investigation, including witnesses, to ensure that strict confidentiality is maintained.

The maintenance of strict confidentiality means that an individual is unlikely to face civil action for defamation i.e. attacking the good reputation of someone or speaking ill of them.

## THE REPORT

The report is provided to the person who commissioned the investigation. Witnesses, complainants and respondents are not given copies of the report to maintain confidentiality.

Please note that information collected during an investigation may need to be released where the company is required to release the information under a legal requirement.

