EMPLOYEE INVESTIGATIONS

HOW TO CONDUCT GRIEVANCE AND DISCIPLINARY INVESTIGATIONS

Book 1 in the The HR Inner Circle Employment Law Library | Fourth Edition

Daniel Barnett
and Mike Clyne

Employee Investigations

Fourth Edition

By Daniel Barnett
and Mike Clyne

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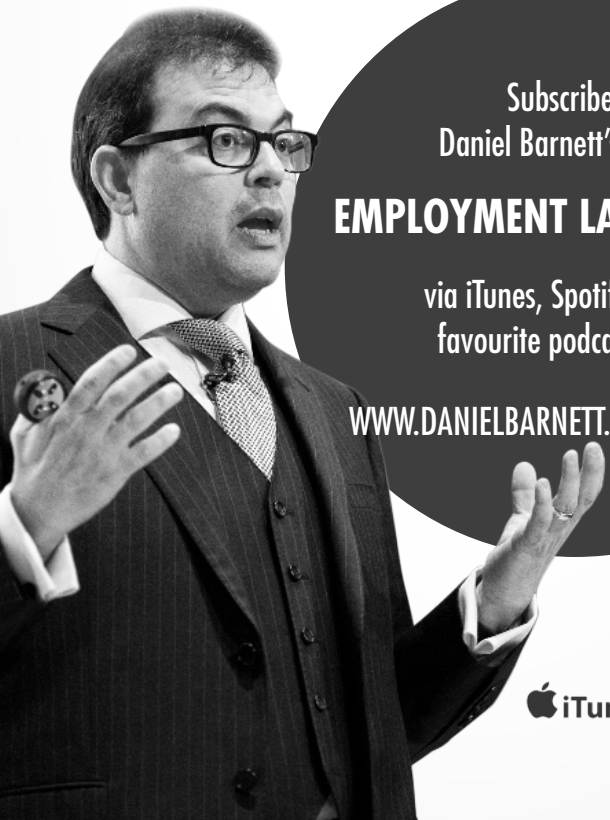

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Daniel Barnett and Mike Clyne
January 2026

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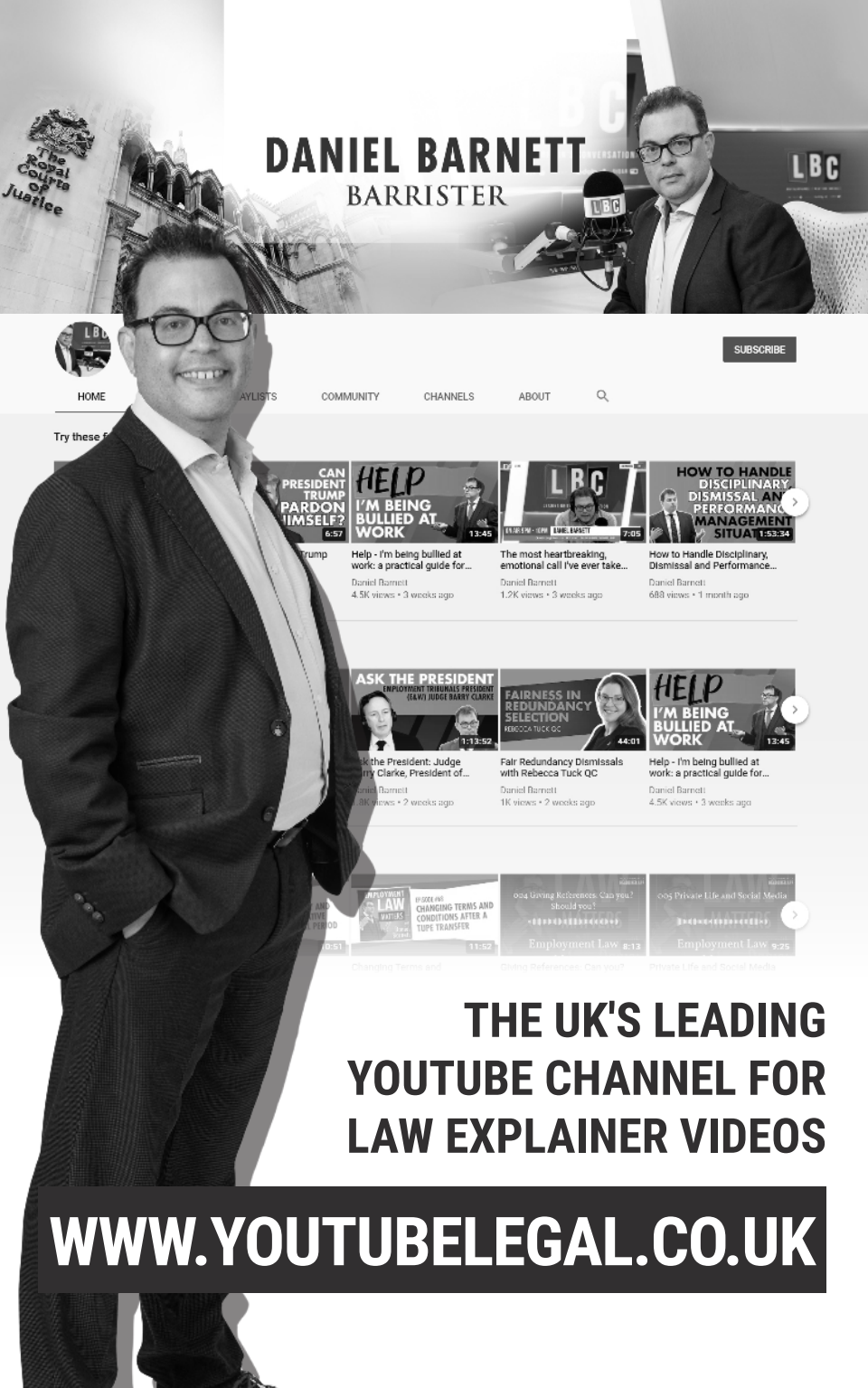

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Introduction

Proper investigations are an essential foundation when it comes to misconduct in the workplace, poor performance and grievances. They help employers keep out of legal trouble, and when procedures for dealing with such problems are undertaken properly, they engender trust with and among employees. Employees are more likely to cooperate, be compliant and report problems in the workplace if they trust that a proper procedure will be followed. Employers who are fair, and who are seen to be fair, are the ones who generally win.

This book is designed to help those organising or conducting employee disciplinary or grievance investigations. It offers step-by-step guidance through the process, covering tricky areas, such as anonymous informers, whether to suspend the employee, remote investigations, how to deal with investigating senior employees and how to ask questions during the meeting. A handy checklist for writing the investigation report is included at the end of the book.

This fourth edition includes new sections on investigating senior employees, remote investigations and predetermined outcomes.

Chapter 1
Initial observations

Investigations, and the paperwork that comes with them, can be daunting. With that said, not all investigations need to be full, formal processes. Instead, they can be simple enquiries made to a small selection of people. Unless the company's policies and procedures require a particular course of action, the employer can consider less formal options.

Working out whether to investigate a grievance is a bit like triaging in the A&E department of a hospital. If the complaint is wrong, trivial or the result of a misunderstanding, it may be best to dispatch the patient with advice to take some paracetamol and rest. Similarly, it's perfectly acceptable for an employer to proceed straight to a meeting, instead of an investigation, and explain that nothing can be done. Holding a full-blown investigation when not strictly required can be likened to the proverbial sledgehammer/nut scenario. Where there is certainty about a situation, and no doubt exists, there is no need for an investigation. With that said, it is important to consider whether 100% certainty exists.

To reduce the risk of mistakes, an employer should conduct an investigation that is appropriate to the situation. The employee under investigation should be given an opportunity to explain themselves. Giving an employee the opportunity to share their side of things also reassures the employer that they have properly understood the relevant facts.

Post-employment grievances

If an employee raises a grievance after their employment has ended and the purpose is simply to resolve a dispute between the employer and the former employee, there is generally no legal obligation to investigate. In many cases, an investigation will add little practical value. However, there are four situations in which it may be sensible to investigate a grievance from a former employee.

First, the grievance may alert the employer to an underlying issue worth addressing to prevent future problems. It may also expose a recurring personnel concern that needs attention.

Second, the grievance might give early insight into a potential tribunal claim. This allows the employer to evaluate its position sooner and gather evidence while memories are still fresh.

Third, not investigating could lead to a 25% uplift to any tribunal award for unreasonably failing to comply with the *Acas Code of Practice on disciplinary and grievance procedures*. This uplift is provided for in section 207A of the *Trade Union and Labour Relations (Consolidation) Act 1992*.

Fourth, if the grievance relates to sexual harassment, failing to investigate may breach the employer's duty to take all reasonable steps to prevent sexual harassment. This can also result in an uplift and could, at least in theory, attract the attention of the Equalities and Human Rights Commission.

Solicitor involvement

When an employer receives a letter of complaint from a current employee's solicitor, there is no legal obligation to treat that letter as a formal grievance. In many cases, involving a solicitor can inflate tensions and create avoidable escalation. Even so, it is sensible for the employer to pause and consider why the employee has chosen to instruct a solicitor and incur that cost in the first place. Is the individual a disgruntled former employee looking to cause difficulty? Are they attempting to apply pressure with a view to securing a settlement later on? Or is there a genuine problem, with the solicitor's letter representing only a small part of a wider concern?

In these situations, it is often more productive for the employer to have an informal conversation with the employee to understand how they want the matter handled. If the employee prefers to follow the organisation's internal grievance process, they should be invited to set out their grievance in their own words. The employer can then decide whether an investigation is appropriate. It is also helpful to establish early on what outcome the employee is hoping to achieve.

Chapter 2

Appointing and briefing the investigator

Appointing an investigator

Whether the decision to begin an investigation comes from the employer or another source, the essential starting point is clarity about what the investigation needs to achieve. The purpose of any investigation is to explore the facts and establish what did or did not happen. To do this properly, the investigator must look for evidence that supports the allegation and evidence that undermines it. Their task is not to decide the outcome for the employee concerned. That responsibility sits with the ultimate decision-maker.

The first step for the employer is to appoint an investigator. The investigator should be someone the employer trusts to carry out a careful and thorough piece of work. They must be logical, methodical, intelligent and professional. The investigator could be a director or manager; an external HR consultant; a specialist in a relevant field, such as finance or safeguarding; or even a solicitor.

Below is a checklist of qualities to look for. The chosen investigator does not need to meet every point, but they should satisfy most of them.

The investigator should:

- Be authorised or required to act under the employer's internal policies or procedures.
- Hold sufficient seniority to ensure that their findings will be taken seriously.
- Be available when needed and able to complete the investigation without avoidable delay, which may require reassigning some of their existing workload.
- Have received some training in conducting investigations.
- Be an effective communicator who can put interviewees at ease and gain their trust.
- Not be easily influenced by others.
- Have no personal involvement in the matter under scrutiny.
- Not create any conflict of interest, or a perception of one, through their appointment.
- Not be better placed to participate in a later stage, such as the disciplinary or appeal hearing. In a grievance process, however, it is often helpful for the person who investigates to be the same person who hears the grievance.
- Be fair and objective, and be capable of being seen to act fairly and objectively.
- Be trustworthy and able to maintain confidentiality.
- Ideally, though not necessarily, have some experience of the type of issue involved.

For instance, a compliance officer may be useful where the allegation concerns a breach of procedure. That said, sometimes it is beneficial to appoint someone less familiar with the subject matter. The right approach depends on the particular circumstances.

Not every organisation has staff who meet these requirements, especially where management structures are flat or teams are small. In those cases, employers may choose to appoint an external investigator, often a lawyer or an independent HR consultant, although this can be costly. The employer's obligation is to act reasonably and ensure a fair process.

If the employee challenges the independence of an external investigator on the basis that the company is paying them, the employer can reasonably respond that:

- Nobody works for free, whether external or internal.
- An internal investigator is not necessarily more independent than an external consultant.
- An external consultant knows their findings may be scrutinised in a tribunal and will therefore take care to carry out the investigation thoroughly and fairly to protect their own professional reputation.

When an employee raises a grievance, it is usually appropriate for the same person to investigate and decide the grievance, unless the employer's policy says otherwise. This can reduce the risk of misunderstanding and save time. If policy requires the investigation and decision-making roles to be separated, make sure both individuals understand their boundaries and that their responsibilities do not overlap. If an outsourced

HR consultant conducts the investigation, they should not make the decision, because doing so could expose them to personal liability in whistleblowing or discrimination claims.

Where an employee raises a grievance about the employer and the employer is the only person available to conduct the investigation, this is not necessarily a problem. Tribunals want to see that the employer has done everything reasonably possible to handle the matter fairly within its available resources. If the grievance cannot be resolved informally, the employer should give the employee a fair hearing, reflect properly on what has been said and reach the fairest decision they can.

For those considering appointing an external investigator, Daniel Barnett has compiled a list of recommended individuals (all members of www.hrinnercircle.co.uk) at: https://go.danielbarnett.com/investigators.

Employers should not underestimate the importance of properly briefing the investigator, nor should they avoid doing so out of fear of becoming too involved. The investigator must be given clear terms of reference that set out the purpose and scope of their role. It is also helpful for the employer to talk through some of the core principles of investigations covered in this book.

The investigator needs to understand what is expected of them, the boundaries of their role and how their work fits within the wider process. The terms of reference should guide how they handle the investigation and how they reach their conclusions from legal and employee relations perspectives.

It is often helpful to show the investigator an example of an investigation plan. Acas provides a useful template:

Investigation Plan

[Amend as required]

Investigator	
Terms of reference	
Provisional time-frame	
Policies and procedures to review and follow	
Issues that need to be explored/clarified	
Sources of evidence to be collected	
Persons to be interviewed (including planned order of interviews)	
Investigation meetings further arrangements (When/where/notes to be taken by)	
Persons to supply own statement	
Investigation meetings to be completed by	
Collection of evidence to have been completed by	
Further considerations	

An investigation plan should set out:

- Who the investigator is
- The terms of reference
- A provisional timetable
- Any relevant company policies and procedures
- The issues to be addressed
- The types of evidence to be gathered
- The people who are likely to be interviewed (this may change as the investigation progresses)
- Practical arrangements for interview meetings
- The expected completion date
- Any other relevant information

A plan helps to focus attention and provides structure around personnel, timings, evidence gathering and process. It should remain flexible because the investigator cannot and should not try to predict everything in advance. Reviewing and updating the timetable as the work develops is therefore essential.

Legal professional privilege

Legal professional privilege is often misunderstood during workplace investigations. Employers often believe that documents produced during the investigation are privileged and protected from disclosure in subsequent litigation, but that is very rarely, if ever, the case.

There are two forms of privilege relevant to investigations: legal advice privilege and litigation privilege. Legal advice

privilege protects confidential communications between a client and a lawyer for the purpose of obtaining legal advice. Litigation privilege applies only where litigation is reasonably contemplated and protects communications made for the dominant purpose of that litigation. That is rare in internal investigations (because the dominant purpose of an investigation is to investigate and reach an outcome, not litigate). In most investigations, legal advice privilege is the operative category. It is narrower. It does not extend to communications with HR, consultants or internal managers, nor does it protect factual documents created during the investigation simply because a lawyer later reviews them.

If HR emails the investigator, commenting on credibility or suggesting a finding, those comments are very unlikely to be privileged. That means a court or tribunal is entitled to see them. Equally, if an investigator sends a draft report to HR or a manager for 'thoughts', those comments will not be privileged unless they come directly from a lawyer for the purpose of legal advice.

If a lawyer is appointed as the investigator, privilege is unlikely to apply to their work because their function is investigative rather than advisory. Tribunals will generally treat investigative work as a factual exercise, even if carried out by a qualified lawyer.

How investigators approach investigations

Broadly speaking, investigators tend to fall into three categories:

1. Those who do the bare minimum to get by, sometimes forming a view before reviewing any documents or conducting interviews, on the assumption that there

is no smoke without fire. These individuals are less common than they used to be, but they still exist.

2. Those who want to dig into every possible detail.

3. Those who have done the job before and understand the process. Experience is an important factor when selecting an investigator, but it is not everything. Experienced investigators may resist guidance. Novices can get it right the first time.

Each type of investigator approaches their task differently. Whatever their style, they must understand how far they need to probe into the issues, which witnesses to interview and how to test the evidence they gather. Ideally, they will earn the trust of the individuals involved and instil confidence that the process will be both fair and thorough. However, there is no checklist dictating exactly what the investigator must do in every case. The central requirement is that the investigation is reasonable.

This raises the obvious question: what counts as reasonable? Is it reasonable to accept an employee's admission of guilt at face value? Sometimes it is, but not invariably. A reasonable employer will take steps to confirm that the admission is genuine and freely given before relying on it. This is why it is sensible for the investigator not only to ask, "Did you do X?" but also, "Why did you do X?" This gives the employee the chance to explain their actions and offer any mitigation.

The greater the seriousness of the allegation and the potential consequences, such as reputational harm or even criminal liability, the more robust the investigation should be and the more care the employer should take when selecting the investigator.

Predetermined outcomes

Managers or HR professionals sometimes decide the outcome before speaking to any witnesses and then steer the process to fit that result. At that point, it is no longer an investigation but a staged exercise that creates avoidable legal, procedural and reputational risk.

There are two indicators that the conclusion was set before the evidence was gathered.

First, the quality of the process falls apart. Key people are left off the witness list, meetings are rushed, and questions are shaped to push the interviewee towards one answer. At the tribunal, the investigator struggles to explain why they ignored obvious witnesses or failed to ask obvious questions. It becomes clear to anyone watching that the process is a sham.

Second, the investigator's notes become selective. Important points are missing or reduced to wording that downplays their significance. That may hold for a while, but once disclosure happens, witnesses' own notes or emails reveal the gaps in the official record.

Tribunals are quick to spot a predetermined outcome, including appeal decisions that simply rubber-stamp what came before. They say so openly in their judgments.

Sometimes, the business concludes that continued employment is untenable, regardless of the factual detail, which may be commercially sensible. But that is not an investigation; it is a settlement negotiation. You should not pretend to investigate in that scenario unless you are running two tracks (a proper, genuine investigation alongside an entirely separate 'without prejudice'-type discussion).

If the business has no real intention of keeping the employee, whatever the outcome, the sensible approach is to value the dispute and negotiate. A dispute that is costed properly and settled early is usually cheaper than running a flawed process that ends up in a tribunal.

Chapter 3

Starting the investigation

HR's role

HR professionals sometimes conduct investigations themselves, particularly when they are independent consultants brought in specifically for that purpose. More commonly, HR supports the manager who is leading the investigation. This chapter looks at the limits of HR's involvement when HR is operating only in that supporting role.

Case law has made it clear that HR must not become overly involved in an investigation. The responsibility for establishing the facts and reaching conclusions about those facts lies with the appointed investigator. In many cases, the investigator will have limited experience of employment law or HR practice. HR's job is to provide enough guidance to help them navigate the process, without straying into the substance of the findings.

Recent cases confirm that:

- It is entirely appropriate for HR to advise on procedure and on the structure and clarity of the investigation report, ensuring it covers everything required (*Chhabra v West London Mental Health NHS Trust*).

- It is not acceptable for HR to exert significant influence over the investigator's conclusions, such as encouraging a change from misconduct to gross misconduct (*Ramphal v Department for Transport*).
- HR's role should be confined to advising on law and procedure, leaving all matters relating to culpability to the investigator (*Dronsfield v University of Reading*).

A tribunal must be satisfied that the investigator reached an independent, reasoned decision rather than simply following HR's instructions. The only exception is where the HR professional is acting as the investigator and decision-maker themselves.

Confidentiality is also critical. Expectations around confidentiality should be set out explicitly so that everyone involved is clear about their obligations. Never assume that individuals know they must keep information confidential. They may not know, or they may later claim they did not know, if criticised for disclosing it.

Suspension

Once an investigator is appointed and the employer has reviewed the relevant policies, attention turns to the employee under investigation and whether suspension is necessary or even possible. In most cases, an employer can suspend if there is a good reason.

Those reasons usually fall into four groups:

1. Health and safety concerns.

2. A real risk that the employee may tamper with evidence, influence witnesses or repeat the alleged misconduct (credible dishonesty concerns often meet this test).

3. Roles where suspension is sometimes required while certain checks take place, such as teachers, police officers or medical staff. Even then, employers should avoid reflex suspensions without thinking through whether they are actually needed.

4. Working relationships have broken down to the point that the investigation cannot proceed fairly with the employee present.

Removing the employee from the workplace can help protect the process. But employers should expect the employee to argue that the decision shows prejudgment.

There are five ways that suspension can lead to a constructive dismissal claim, or to a finding of unfairness, if the employer later decides to dismiss:

1. Suspension may be an inappropriate step. This includes situations where there is too little evidence to justify it, or where the allegation is not serious enough to warrant taking the employee out of the workplace.

2. Suspension may last too long or may not be reviewed properly. In *Camden & Islington Mental Health Trust v Atkinson*, the tribunal found constructive dismissal because the employer failed to review the suspension.

The allegation had fallen away, and the employer should have lifted the suspension. Employers must monitor whether suspension remains justified as time passes. They will be criticised if they keep an employee suspended once it is no longer reasonable.

3. Suspension may be communicated to others in a way that is not neutral. One of the authors of this book was involved in a case where a teaching assistant at a primary school alleged constructive dismissal, partly on the grounds that the headteacher informed staff of "safeguarding concerns" relating to the teaching assistant. The employee said this was unnecessary and caused lasting reputational harm, whatever the outcome of the investigation.

4. Suspension may cause the employee to lose or fall behind on essential skills. This is unusual, but it can happen. An airline pilot, for example, may lose certification if they fail to fly a minimum number of hours.

5. Suspension without pay will breach the employment contract if the employee's terms do not expressly allow it. Even when unpaid suspension is permitted, tribunals expect it to be as short as possible and will examine any delay in the investigation closely.

How the employer tells the employee about the suspension, and how this is explained to colleagues, is critical. The employer must make it clear that suspension is not a punishment. It is a temporary step that does not indicate the likely outcome and will be followed by a full and fair investigation. Whether

the employee accepts this is their choice, but the employer's behaviour throughout must match the reassurance given. A manager with suitable seniority should deliver the message, particularly if the disciplinary policy identifies who has the authority to suspend. The wording used must also align with what the employer then does. Any mismatch between the explanation and the later actions could fuel claims that the process was unfair.

The employer should also explain what is expected of the employee during suspension. The employee remains employed and bound by their contractual duties but must not attend work or contact clients or colleagues. To avoid any misunderstanding, the employer should confirm all details of the suspension in writing.

If the employer decides to suspend, they should think through practical issues, such as:

- Whether the suspension starts immediately or, for example, at the end of the week
- Whether to tell the employee straight away or wait until the office is quieter or the employee is at home
- Whether the employee will keep remote IT access
- Which approach best reduces the risk of the employee contacting witnesses or tampering with evidence

Suspension is not the only temporary measure available. If the relationship between the employee under investigation and a colleague is breaking down, the employer may need to move one or both of them to another department for a short period. However, the tasks given must match the employee's

usual level of work. If the employer downgrades the role, it risks a constructive dismissal claim.

There are other things the employer needs to consider, including:

- The welfare of other employees while the employee under investigation is suspended, as the situation can put a lot of pressure on them.
- The message to be shared externally if the employee under investigation is client- or customer-facing.
- Whether it will be helpful, if resources allow, to give the employee access to a colleague who can be a source of communication and support during the suspension. The colleague will need to be trustworthy, discreet and briefed appropriately. Alternatively, it may be possible to give the employee under investigation access to pastoral or counselling support (a good time to remind them of your organisation's EAP helpline).

Police involvement

If you have ever had to rank the challenges an organisation or an investigator faces during an investigation, police involvement will usually appear at the top. It adds an unpredictable and difficult layer to a situation that already has no easy outcomes.

If an employee has been seriously injured or has stolen a large sum of money, or if regulations require a police referral, employers often have little choice but to involve the police. More commonly, the police contact the employer first to

confirm they are investigating an incident involving an employee.

For employers, the difficult question is whether to pause the internal investigation when it relates to the same event as the criminal investigation. There is no law requiring a pause; it depends on what is reasonable in the circumstances. Internal and criminal investigations are very different processes and often reach different conclusions. A criminal outcome does not necessarily determine internal decisions about conduct, capability or suitability for continued employment.

In practice, separating the two processes is challenging. Employees often fear self-incrimination. If the employer presses ahead internally and asks the employee to give their account, the employee may be reluctant to cooperate because the same facts are under police investigation. In those circumstances, it can be sensible to pause the internal investigation until the criminal side has progressed, even though that might involve very long delays. If the employee is entitled to salary while the police process is ongoing, but they cannot work, it is a factor that will support an employer continuing with its internal process and not waiting for the outcome of, say, a trial two years in the future.

When deciding whether to continue, the employer should consider:

- Whether swift action is essential. Acas guidance says that "where the matter requires prompt attention, the employer need not await the outcome of the prosecution before taking fair and reasonable action."
- What the organisation's policies and procedures say, in case they address this situation.

- Whether it is practical to wait, especially if the suspended employee will remain on full pay, as explained above.
- Whether the organisation can function properly with the internal investigation on hold for an indefinite period.

In safeguarding cases, the police or local authority may specifically ask the employer to pause the internal process while they investigate. They have no direct power to enforce this, but refusing to cooperate can be raised later, for example, when renewing a care home licence, so cooperation is generally wise.

Employers should keep perspective. Police involvement does not automatically make the allegations against the employee more credible. Employers should treat the police investigation and the internal process as separate. Even if the criminal case goes nowhere, the employer may still be justified in continuing internally if the issues are distinct.

The investigator's aim should be to conduct an investigation that:

- Is reasonable
- Is balanced
- Reflects the seriousness of the allegations and the potential consequences

The investigator can use information provided by the police, but they should not rely on it alone.

When dealing with any third-party information, as set out in *Leach v The Office of Communications*, the investigator must:

- Assess its reliability.

- Consider the integrity of the source and the safeguards they use to ensure accuracy.
- Think about what disclosure could lead to.
- Analyse how the information fits into the investigation and what conclusions it supports.

Employers should always remember that the police work to a different standard of proof. The police must judge whether there is a realistic prospect of proving guilt beyond reasonable doubt. Employers only need reasonable grounds for their belief, which is a lower threshold. The police may decide not to prosecute, but an employer may still dismiss fairly on the same facts.

Protecting confidentiality for the employee under investigation

The investigation must remain as confidential as possible, and that duty applies to everyone involved: the investigator, managers, witnesses and any colleagues who become aware of what is happening. Those involved should be told that breaching confidentiality can amount to misconduct under the organisation's policies. This is also a good point to update the investigation plan (from Chapter 2) with details of who knows what, when they were told and by whom. Complex investigations are difficult to track, and if confidentiality is breached, this record will help identify the source.

If a complainant objects to the confidentiality requirement and says they are being silenced, remind them that confidentiality is essential for a fair and effective investigation.

The investigator should decide in advance what information must be withheld to protect the privacy of the employee under investigation. This is not just about courtesy. It also ensures that evidence is reliable and not influenced by private conversations (or gossip) between witnesses.

Witnesses must also understand how the investigator will use the notes from their interviews and whether those notes will be shared with the employee under investigation. The investigator should consider from the outset that these notes may be requested in a future subject access request. Unclear handling of interview notes causes significant problems if fairness later requires sharing them with the employee under investigation. Everyone involved needs a clear explanation of how the notes will be used and at what stage of the process.

A witness who insists on anonymity

Some witnesses may ask the investigator to keep their identity or evidence confidential. When this happens, the investigator must consider whether withholding information would make the investigation unreasonable or prevent the employee under investigation from responding properly.

Confidentiality should only be used as a last resort. If a witness fears reprisals or other negative consequences, and those fears are well founded, anonymity may be the only option. However, confidentiality should never be offered at the outset of an approach to a potential witness. Remember that employees also owe duties to their employer, and the more senior the employee is, the greater their obligation to report concerns and cooperate fully.

Where employers are unsure about redacting parts of statements, the Employment Appeal Tribunal decision in *Linfood Cash & Carry v Thompson* provides helpful guidance. It explains how employers can protect witnesses without treating the employee under investigation unfairly.

The guidance says employers must:

- Record the witness's full account in writing, including dates, times, what they saw and how they saw it. The full version should be written first; anonymity can be added later, before it is shared.
- Consider whether the witness may have an ulterior motive.
- Seek corroboration to support the witness's account.
- Allow the employee under investigation to see the anonymous statement.

Further issues arise if the matter progresses to a disciplinary hearing. In the end, confidentiality decisions always depend on the specific circumstances.

What if a complainant goes off sick?

Another challenge arises when a complainant who has raised a grievance goes off sick. If the grievance does not involve other employees, there may be little urgency to resolve it. But if the behaviour of colleagues is in question, letting the investigation drift may be unfair and unhelpful for everyone involved.

If the investigation continues while the complainant is off sick, the employer must ensure they can take part

properly. The complainant needs to be able to give a full and fair account of their grievance despite being away from the workplace. The employer should consider how to adapt the process to suit the complainant's health. Options include asking for written submissions, holding meetings on Zoom or Teams, or allowing a family member to attend for support. It may also be appropriate to reassure the complainant that the grievance will be handled promptly and carefully.

However, employers must also recognise that if the complainant is unhappy with an investigation carried out while they are off sick, they may raise the same grievance again when they return. The alternative is to wait until the complainant is back at work. But if the sickness absence is caused by anxiety or depression linked to the very issues they are complaining about, delaying the investigation may simply prolong the problem.

Parallel processes

How do you manage parallel and competing processes, such as simultaneous grievance, disciplinary, performance, whistleblowing or safeguarding processes?

Each process carries distinct risks. The employer's first task is to decide which process has priority and record the reasoning so the approach can be defended later.

Sometimes, one process must pause to protect another. A grievance that questions the fairness or motives behind a disciplinary process does not automatically stop that process, but it does require assessment. If the grievance challenges the investigator's integrity or alleges bias by the decision-maker, pausing may be necessary to maintain procedural fairness

(although if the allegation of bias is made at a very early stage, the simplest thing to avoid derailing the investigation might be to change the investigator). If discrimination or whistleblowing detriment is alleged, pressing on without addressing the grievance may increase legal exposure. By contrast, if the grievance merely repeats issues already explored within the investigation, it is usually better to absorb it into the existing fact-finding and proceed.

Parallel processes sometimes trigger claims of victimisation. An employee who raises a grievance and then faces disciplinary action may argue that the latter is retaliation for the former. The safest approach is to separate the justification for each process, record it clearly, and ensure timelines and communications demonstrate that action would have been taken even without the initial act. If a victimisation allegation concerns the conduct of the manager or investigator handling the disciplinary process, reallocating the case to someone else can reduce the risk.

Fairness can also be compromised when performance concerns sit alongside misconduct allegations. Capability procedures focus on support and improvement, whereas disciplinary procedures address culpability. Running both in parallel can create an impression of prejudgment. Where behaviour could fall into either category, the employer must choose the appropriate framework and explain why. A practical approach is to resolve any misconduct allegation first, because it depends on factual findings, and then return to capability. If a whistleblowing disclosure is raised at the same time, the investigation must separate the disclosure, test its substance, and demonstrate that any action on

performance or conduct is not a response to the disclosure. Accurate minutes, careful emails and clear terms of reference all help show this separation.

Safeguarding referrals add further complications. Once a matter is referred to a local authority or the police, evidential integrity becomes paramount. The employer must not contaminate evidence or influence witnesses. Internal interviews may need to stop until the safeguarding body confirms that they will not interfere with external enquiries. During any pause, the employer should still secure documents, preserve electronic material and safeguard service users or colleagues. The pause should be recorded, limited where possible, and reviewed at regular intervals.

Covert surveillance

From an unfair dismissal perspective, an employer can rely on evidence obtained through covert surveillance, provided it is used only in exceptional circumstances, and the employee under investigation is treated fairly. The employer must be clear about the specific evidence they are seeking. Surveillance should never be used as a fishing exercise. It must be a last resort where there is a credible allegation of wrongdoing that needs verifying. The employer must also be satisfied that what they are doing is justified, authorised and focused on the allegation being investigated.

Any evidence obtained must then be handled responsibly. This includes lawful data processing and careful interpretation. For example, if an employee is off sick with a chronic shoulder problem but is filmed playing tennis, the employer should show that footage to an appropriately qualified medical

professional. The employer should not attempt to assess the video themselves.

In *Pacey v Caterpillar Logistics*, the employer believed the employee had exaggerated his back injury. Surveillance showed him doing everyday activities, such as driving and shopping. The employee said he had been advised to take gentle exercise, and his GP supported that explanation. However, the GP had not been shown the footage. The tribunal found the dismissal unfair because occupational health should have assessed the video, and the employer mishandled the GP evidence. The investigation was inadequate and led to an unreasonable conclusion. The lesson is simple: have a suitable medical expert assess the footage. Courts rarely look favourably on employers who rely on their own assumptions.

In *City and County of Swansea v Gayle*, the employee had slipped away from work to play squash and then claimed he was at work. Covert surveillance captured him outside the sports centre during work hours.

The Employment Appeal Tribunal held the dismissal to be fair and made several important points about privacy:

- Taking photographs of individuals in public places does not usually breach privacy rights.
- Employers are entitled to know what employees are doing during working hours.
- Individuals committing fraud cannot reasonably expect privacy.

Surveillance was not strictly necessary because there was already ample evidence of misconduct, but that did not undermine the fairness of the overall investigation. The

Employment Appeal Tribunal confirmed that an investigation is unlikely to be unreasonable simply because it is thorough.

Since GDPR, employees have become far more aware of privacy rights. Electronic surveillance, such as monitoring emails or instant messages, is not lawful simply because it takes place at work. In *Barbulescu v Romania*, the European Court of Human Rights held that monitoring workplace communications can breach privacy rights, even where the accounts are work-related.

Barbulescu makes clear that electronic monitoring is lawful only if the employee has been told in advance about the nature and extent of the monitoring and how the data will be used. This has direct implications for any investigation that may later be examined by a tribunal. Employers should always check their IT policies and handbooks before any monitoring takes place. Employee awareness is essential. Following *Barbulescu*, the employer must also ensure that any monitoring is proportionate and goes no further than necessary in the circumstances.

Investigating senior employees

Where a senior employee is involved, the core investigative principles set out in this book still apply. That protects the business from arguments that the process was tailored to suit the senior figure, and signals to the wider workforce that the rules apply to everyone.

In practice, this can be difficult. In a PLC, large multinational or government department, the stakes are often high when a senior figure is under scrutiny. FCA-regulated firms may have regulatory duties that arise even before the

investigation formally begins and again when it concludes. If the business is listed on a public stock exchange, senior leadership or the company secretary should understand the relevant listing rules and disclosure requirements at the outset. Do you need to notify a regulator, exchange or other body, and if so, when and whom? What are the market risks if news of the investigation leaks? Is everyone involved clear about their responsibilities in handling potentially market sensitive information, including market announcements and insider dealing restrictions? Public sector organisations may face similar issues when deciding how to approach an investigation involving a senior civil servant or executive, including how quickly they must notify central bodies or sponsoring departments.

Sensitive investigations involving senior employees, regulatory exposure or possible market impact bring governance duties that sit alongside, and sometimes above, standard HR processes. Boards, audit committees and other governing bodies must be briefed at the right time, for the right reasons and in a way that leaves a clear record of what they were told and what they decided. Poor governance can damage relationships with regulators, unsettle investors and staff, and undermine the credibility of the investigation.

The starting point is to decide whether any board-level notification is mandatory. FCA-regulated firms must consider their SMCR obligations, including whether the concerns affect fitness and propriety. Charities may need to tell trustees immediately if safeguarding issues, serious incident reporting or significant reputational harm is in play.

Listed companies must assess whether the matters amount to inside information that triggers a market announcement.

Conflicts of interest must be identified early. Where the individual under investigation sits on the board, or where executives who hold decision-making authority may themselves be implicated, governance protocols often require a board subcommittee or the appointment of an external law firm or investigator to maintain independence. Terms of reference should specify who receives updates, how frequently, in what format and which documents the board or committee will review. Access to investigation material should be limited to those with a genuine governance role to reduce the risk of leaks and to preserve confidentiality.

Boards should receive concise, factual updates rather than draft findings, working notes or commentary. The investigator must understand the difference between reporting on progress and inviting influence over conclusions. Governance oversight should never be allowed to steer the factual analysis or suggest what the outcome should be.

Where a matter could become market sensitive, organisations must decide how they will manage insider lists, control information flow and implement share dealing restrictions quickly. Communications, legal and company secretarial teams should work with HR to plan internal and external messaging, including what will be said if the investigation becomes public.

This chapter highlights the importance of confidentiality. This becomes even more critical where senior employees are involved. Be explicit about who sits within the inner circle and, at a minimum, keep a simple record of who has been told that

an investigation is underway. Identify who will conduct the investigation and whether they are genuinely independent. Given the employee's seniority, it is often sensible to appoint an external HR specialist, employment lawyer or regulatory investigator. If you do, check for conflicts of interest and any perception that the investigator is too close to the individual or the board. If suspension is necessary, handle it carefully and respectfully, explaining the reasons and repeating that suspension is not a finding or a sanction.

Practical and commercial realities may also affect timing. A potential issue may surface early in a week when the business is preparing for a major product launch or significant announcement later that week. You should consider whether postponing the start of the investigation would change the risk profile in any meaningful way, or whether it would be better to wait a short period so that you can secure the full attention and participation of everyone involved, including the senior employee and key decision-makers.

Chapter 4
The investigation meeting

It is not enough for HR to assume that an investigator already knows what they are meant to do. As set out in the investigation plan in Chapter 2, HR must prepare a clear plan and then discuss it with the investigator to ensure they understand exactly what they should and should not do. The investigator must also understand the importance of confidentiality and make this clear at the outset of the meeting.

Careful planning is important. In some investigations, the order in which witnesses are interviewed is crucial for producing reliable evidence. HR should think carefully about this at an early stage. They must also ensure that the investigator has all necessary documents before any meeting takes place. The investigator, in turn, must be familiar with relevant policies and procedures so they can follow them correctly.

Before the meeting takes place, the investigator should plan their questions and make the necessary logistical arrangements, including setting a time and place and booking a suitable room. They should write to the interviewee to invite them to the meeting, explain the position on accompaniment and remind them of the need for confidentiality.

At the start of the meeting, the investigator should explain who is present and why, the purpose of the meeting,

the investigator's role, and the requirement for confidentiality. They should also explain who will see the interviewee's statement and confirm that the statement may be used in the investigation report.

During the meeting, the investigator should ask questions designed to establish the facts and should probe appropriately without becoming adversarial. They should note the interviewee's responses and record if the interviewee declines to answer a question. The investigator should also try to gather evidence that may support or challenge the information provided.

At the end of the meeting, the investigator should ask the interviewee whether there is anything further they believe is important to mention and whether there are any other people who ought to be interviewed. The investigator should explain that a follow-up meeting might be required and tell the interviewee that they will receive a copy of their witness statement to review. The investigator should also ask the interviewee whether they are satisfied with the way the meeting has been conducted. If any concerns are raised, they should be addressed immediately. This makes it more difficult for the interviewee to raise a later complaint about the conduct of the meeting.

After the meeting, the investigator should give the interviewee a copy of their witness statement and ask them to confirm its accuracy. They should reflect on the important facts arising from the meeting and consider whether the existing evidence supports or contradicts these points. The investigator should then decide whether any further evidence

needs to be collected and whether any additional meetings are necessary.

Evidence gathering

An investigator who understands their responsibilities and feels confident about the steps they need to take can make a significant difference to the quality and pace of the process. They must also be clear about the limits of their authority, particularly around monitoring communications and managing data.

A witness statement is only one source of evidence. It is equally important to gather other material, especially electronic evidence, before it is lost, altered or becomes less reliable. Investigation meetings can also reveal new information. If an interviewee refers to documents, such as Google Docs, files or text messages that might assist, the investigator should make a note during the meeting, then send the interviewee a list afterwards so they can supply the material.

Modern investigations often depend heavily on electronic evidence, and both the volume and complexity of that material have increased significantly. Simple searches of email accounts or shared drives are often inadequate when serious allegations arise or when the organisation holds substantial quantities of digital data. In these circumstances, investigators must recognise when specialist digital forensics support is required and understand how to manage electronic material in a way that is defensible and proportionate.

Digital forensics can provide assistance that goes beyond routine document retrieval. This may include recovering

deleted files; extracting mobile device data, such as messages and location information; examining cloud-based communications; and determining whether documents have been altered. Metadata, including timestamps, authorship, version history and geolocation, can be highly valuable, but it is also very easy to contaminate. Investigators should therefore avoid opening, editing or moving original documents unless absolutely necessary. Where metadata is central to the issues, a forensic specialist should be engaged to preserve and review the material.

Retention protocols are essential. As soon as an investigation is anticipated, the employer should pause any routine deletion processes and ensure that potentially relevant data is preserved. This may require IT involvement or external expertise. Poor data preservation can undermine the investigation and expose the organisation to legal and reputational risk, especially if the matter proceeds to litigation.

Chain of custody records are just as important. They should record who accessed each piece of electronic evidence, when they accessed it, and what action was taken. A clear and unbroken chain of custody helps demonstrate that the material has not been tampered with and supports the reliability of the findings.

Because digital evidence can be intrusive, any collection exercise must be proportionate. Investigators should identify the specific data they require and avoid broad searches that capture irrelevant personal information. Before accessing cloud accounts or personal devices, the organisation must review the relevant policies, confirm that there is a legitimate basis for the search and obtain explicit consent where

needed. Handled correctly, digital forensics strengthens the investigation and protects the organisation if its decisions are scrutinised later.

On a practical level, as soon as a significant volume of electronic material needs to be compiled, the investigator should decide how it will be catalogued and stored for later disclosure or for responding to any subject access request.

There must be a clear and legitimate reason for conducting any search. The investigator should seek the employee's specific consent before searching, even where the contract appears to give a right to do so. If the employee refuses, that refusal may be unreasonable, but the investigator must explore the reasons carefully and make detailed notes of the discussion.

It is good practice for the employee to be present when their desk, locker or cupboard is searched. As a minimum, the investigator should give them the opportunity to attend. If the employee cannot or chooses not to attend, a manager should act as a witness to the search. Where the investigation may involve criminal conduct, the investigator should consider involving the police, who have wider powers and are better placed to handle potential criminal evidence.

When using CCTV footage or other personal data about the employee, the investigator must check the organisation's contracts, policies and privacy notices. If there is no clear right to rely on this material, they should avoid doing so unless it is not reasonably practicable to establish the facts using other forms of evidence. Cost can be a relevant factor when assessing what is reasonable in the circumstances.

Holding the meeting remotely

Historically, when employees were mainly office-based, investigations were often slowed by holidays, sickness absence, pressing project work or deliberate avoidance by witnesses. Remote and dispersed workforces have added new layers of complexity. Before 2020, many practitioners doubted whether investigations conducted by video or phone could ever be seen as fair. Since the pandemic, that argument has no weight. Tribunals have accepted remote evidence for years, and remote formats are now common because they save time, reduce friction and maintain momentum. They also help reach witnesses in different locations and allow investigators to sequence and revisit interviews without the usual availability obstacles.

If a face-to-face meeting is not practical or will cause delay, an investigating officer is entitled to insist on a remote meeting. That decision rests squarely on the statutory test of reasonableness. The law does not require investigators to accommodate inefficient preferences from participants. The only question is whether the method chosen risks undermining fairness. In practice, it rarely does.

Where remote meetings are used, discipline and method matter.

Practical guidance includes:

1. Face-to-face remains preferable to video, and video is preferable to telephone. Remote meetings are a pragmatic compromise, not an automatic replacement.

2. If a remote meeting is used, ensure the participant understands the arrangements and has the means to join from a private space.

3. Make it clear that you expect the participant to be on camera. Explain that switched-off cameras or claims of technical failure are not acceptable without good reason.

4. At the start of the meeting, state who is in the room with you and ask who is in the room with them. Record this in the notes.

5. If you will record the meeting, tell the individual and confirm that they will receive a copy. If you will not record it, make that clear and check that they are not recording either. Add this to the notes.

6. If you are not recording, make sure the participant knows you will be taking notes and that they will receive a copy. Clarify if the notes will not be verbatim. They may take their own notes if they wish.

7. If the participant is accompanied by a colleague or trade union representative, they must be able to confer privately. If they are not in the same room, this can be done through breaks – where cameras and microphones are turned off – or through breakout rooms. Never record the content of a breakout room.

The right to be accompanied

Employees who are invited to a grievance or disciplinary hearing have the legal right to be accompanied by a trade union representative or a workplace colleague. However, this right does not extend to investigation meetings, provided such a meeting is not the final stage of the process and there will be a later grievance or disciplinary hearing.

Even without a formal legal right, it is usually sensible to allow a complainant or interviewee to bring someone with them if they ask. This could include a family member or friend. It rarely causes any practical problems and can be helpful if the process is scrutinised later. If the companion turns out to be a lawyer or HR professional, you can still politely decline if their presence is not appropriate.

In *Stevens v University of Birmingham*, the court held that a refusal to allow accompaniment breached the duty of mutual trust and confidence. That outcome was unusual.

Key factors were:

- The allegations were serious enough to threaten the employee's career, which made appropriate support essential.
- The investigator and witnesses had support, creating an imbalance.

Witnesses do not have a right to be accompanied. The only limited exception is in some regulated sectors where the witness might be exposing themselves to potential criminal liability.

Reasonable adjustments

Under the *Equality Act 2010*, employers have a duty to make reasonable adjustments for disabled employees.

If an employee qualifies as disabled (meaning they have an impairment that has affected their ability to carry out normal day-to-day activities for 12 months or more), depending on the nature of the disability, the duty to make reasonable adjustments may involve:

- Allowing the employee to be accompanied, perhaps by a parent
- Allowing frequent breaks
- Holding the meeting in a different location
- Conducting the meeting entirely in writing

Questioning during the meeting

Some of the most common pitfalls in investigations arise from poor questioning. HR should help the investigator understand how to frame questions that draw out useful information and support a fair process.

Acas provides helpful guidance on the types of questions investigators can use. It is worth building these into the meeting plan. This guidance also reassures investigators that they are not expected to cross-examine either the employee under investigation or any witnesses. They should therefore avoid interrogative questions (e.g. "Why did you do that?"), leading questions (e.g. "Do you think X was out of control?"), and questions grouped together in a way that confuses or

pressures the interviewee (e.g. "When you got to work, did you see X straightaway and notice where they were and what they were doing?").

Here is what Acas recommends:

Open questions – to help the interviewee start talking. Interviewees are often nervous, and a couple of open questions early on can settle them. In a grievance investigation, it is helpful to begin with questions about their role and reporting lines. This provides context and gets them talking about something familiar. Examples:

- Can you tell me what you heard or saw?
- Can you describe exactly what happened?

Closed questions – to obtain specific information.

Examples:

- What did X say to the customer?
- Where were you when that happened?
- Who else overheard?
- Has this happened before?

Probing questions – to test and clarify the evidence without becoming aggressive.

Examples:

- You said that you saw X looking shifty. What exactly were they doing?

- Can you tell me more about the way X was loading the pallets onto the forklift?

- Who was in the meeting when X raised their voice to Y?

Questions about feelings – to explore the facts from another angle. Although the aim is to establish what happened, feelings can provide context and illustrate the impact of events. These questions will not always be necessary. Examples:

- What concerned you about X's behaviour?
- Why did you feel you had to report the incident?

'What else?' questions – to ensure nothing important is overlooked. These give the interviewee a final opportunity to add relevant information. Examples:

- Do you remember anything else about the way X was that morning?
- Is there anything else you think I need to know?

Summaries – to finish the meeting by checking the investigator's understanding. This helps ensure accuracy and gives the interviewee a chance to correct anything that is wrong. Examples:

- Am I right in saying that you saw X going into the accounts office at 3.30pm that day while no one else was in there?

- Have I understood correctly that you drove from head office to a meeting in Yeovil on 23 June, and couldn't have been seen using your mobile while driving because it was in your boot for the entire journey?

Having a list of planned questions is helpful, but investigators must also listen carefully and adapt as the conversation develops. A recording or live note taker allows the investigator to concentrate on the interviewee's answers and choose the right follow-up questions.

Breaks can be used well. At the outset, the investigator can explain that the interviewee may take a comfort break at any time. If the interviewee is accompanied, they can have a private discussion during a break. The investigator can also take a short break to reflect on what has been said, so they do not miss a key follow-up question. None of this would be viewed negatively by a tribunal.

Occasionally, an investigator thinks of an important question after the meeting. There is no reason why they cannot put the question to the interviewee afterwards, ideally by email so there is a clear record of both the question and the response.

Assessing witness credibility and handling inconsistent accounts

Investigators routinely encounter situations where witnesses give inconsistent or conflicting accounts. This is not, in itself, evidence that someone is lying. Memories differ, perceptions vary, and people notice different details depending on their role, proximity, stress level or personal stake in what happened.

The investigator's task is not to judge motive or character, but to decide which account is more likely on the balance of probabilities. That decision should be based on a structured assessment of credibility.

Credibility is not about who looks confident, senior or articulate. Confident witnesses can be inaccurate, and hesitant witnesses can be reliable. Placing too much weight on demeanour is a common mistake. Credibility analysis should concentrate on objective indicators: internal consistency within the witness's own account, external consistency with other evidence, accuracy of detail and whether the explanation fits logically with the surrounding facts. Differences on minor or peripheral points are normal. The investigator should focus on inconsistencies that matter to the outcome.

Internal consistency is the starting point. A credible witness gives an account that remains broadly the same over time. If their description changes significantly without a clear explanation, the investigator should explore why. Sometimes the change is innocent, for example, because the second interview took place at a less stressful time or after the witness had reviewed documents. If a witness cannot give a sensible reason for a major change, it is reasonable for the investigator to place less weight on their account. Minor changes in emphasis or memory should not be blown out of proportion. The key question is whether the central version of events stays stable.

External consistency involves comparing the witness's account with contemporaneous documents and the evidence of others. Emails, rota records, CCTV footage, photographs, access logs and WhatsApp messages often provide an

objective anchor against which to assess witness testimony. A witness whose account aligns with several independent pieces of evidence is usually more reliable. Where a witness's account is contradicted by objective material, the investigator should consider whether the witness misunderstood what they saw, had limited visibility, was affected by stress or is simply mistaken. Deliberate fabrication is uncommon, but the investigator should still consider whether the witness has a personal interest in the outcome.

Motive is relevant but needs careful handling. A witness with an obvious grievance, strong allegiance or personal stake may be less reliable, but motive alone should never decide credibility. Tribunals are cautious about employer assumptions that an employee has an ulterior motive. If motive is taken into account, the investigator should record the factual basis for that view. The core question remains whether the witness's evidence stands up when compared with the other material.

Specificity and detail can also help when accounts diverge. Some witnesses give precise descriptions of dates, times, movements and dialogue. Others describe general impressions. Detailed evidence is not automatically more reliable, but it can help the investigator with reconstructing events. The investigator should test key details with careful, neutral questioning, not to catch the witness out but to understand the limits of their recollection. If a witness insists they are absolutely accurate about minor details that later turn out to be wrong, it is sensible to treat their wider account with caution.

What about where accounts are sharply opposed? The investigator should map the areas of agreement and the areas

of disagreement. This helps avoid being distracted by minor contradictions and highlights the issues that really matter. For each disputed point, the investigator should consider what each witness says, what objective evidence supports or undermines each version, whether either account is inherently implausible, and whether the witnesses had different vantage points or knowledge. This method leads to defensible conclusions even where absolute certainty is impossible.

In some cases, the investigator will conclude that each account has strengths and weaknesses. The correct response is not to give up on the analysis, but to decide which version is more likely. An investigation should not leave key issues unresolved. The investigator should explain why one account was preferred, and that explanation should be rooted in reasoning and evidence, not intuition.

Investigators should also remember that some discrepancies are created simply by the passage of time. The longer the delay between the event and the interview, the more likely it is that recollection will be distorted. In those circumstances, it may be reasonable to place greater weight on contemporaneous documents or early written accounts. If an employee raised a concern promptly in writing, that would often carry weight.

Clear documentation is critical. If credibility concerns or reliability issues influenced the investigator's thinking, this must be recorded explicitly in the investigation report. A tribunal, an appeal manager or a future decision-maker cannot reconstruct the investigator's reasoning unless it is clear from the written record.

Note taking and audio recording

HR should brief the investigator in advance about the importance of taking clear and comprehensive notes. It may also be helpful to have a second person in the meeting whose sole role is to note the discussion (that person is often the HR professional themselves). HR should underline how critical procedural notes are in demonstrating that the process has been fair and well managed. Ideally, the complainant or alleged victim, along with any other witnesses, should sign the notes at the end of the meeting to confirm they are accurate.

An alternative is to audio record the meeting, which offers two advantages:

1. It provides an indisputable record of what was said, which removes any scope for an employee to challenge the accuracy of written notes either when they first receive them or, more problematically, months later at a tribunal.

2. It reduces the risk of an employee making a covert recording. One of Daniel Barnett's most awkward tribunal losses occurred when an employee produced his phone during cross-examination and asked if the tribunal would like to hear his recording of a disciplinary hearing. The recording completely undermined the credibility of the witness and resulted in the employer losing the case.

Five to ten years ago, tribunals tended to be wary of audio recordings. Today, partly due to the rise in remote meetings

during the Covid-19 lockdowns, audio recordings are widely accepted as a routine feature of an investigation.

The witness who won't cooperate

A common difficulty for an investigator is dealing with a witness who refuses to attend an investigation meeting. Their reluctance may stem from several causes. They may have something to hide, they may simply not want to get involved, or they may fear a backlash from colleagues or from the person under investigation. Some may be stalling for time, and others may just be unwilling to engage for no good reason.

Where there is a genuine reason for the refusal, the investigator should offer to rearrange the meeting. This is particularly important where a reasonable adjustment is required. They should explain the process, reassure the witness and emphasise how their cooperation will help the employer address the issue properly. The investigator should also ask the witness to provide a written account of events in as much detail as they can manage.

If the investigator is satisfied that there is no valid reason for the witness's lack of cooperation, the employer may have grounds to discipline the employee for failing to follow a reasonable instruction. Before taking that step, the investigator must review the relevant contracts, policies and procedures and ensure that the request to attend the meeting was itself reasonable.

Chapter 5
The outcome

An investigation must always reach an outcome. That outcome needs to be credible and capable of withstanding scrutiny in a forensic tribunal setting.

The investigator's role is similar to that of a judge in a tribunal case. They must examine the facts carefully and methodically to reach a conclusion about what probably happened. The standard of proof is the balance of probabilities, which is lower than the criminal standard of 'beyond reasonable doubt'. Crucially, the investigator must reach a conclusion. Saying, "There isn't enough evidence, so I can't reach a decision," amounts to avoiding responsibility.

Take a harassment case as an example. If a man is accused of sexually harassing a woman and the investigator concludes that, because there were no witnesses, the allegation cannot be proven, the investigator is not doing their job. They must listen to both accounts and decide which is more likely, even if the decision feels uncomfortable. If they fail to do this, a tribunal judge will have little difficulty finding that the investigation was inadequate, regardless of how few people saw the investigator fail to reach a conclusion.

Writing the investigation report

When preparing the report, the investigator should explain why they undertook particular steps and how they arrived

at each conclusion. This demonstrates reasonableness and gives insight into their decision making. A poorly executed investigation or a report lacking clear logic can have the opposite effect and may even cause lasting damage to the organisation.

Report writing is a skill in itself, and employers should be realistic about an investigator's capabilities. This is yet another reason why appointing an external expert can be sensible in complex cases. The HR Inner Circle has a list of recommended independent investigators at www.members.hrinnercircle.co.uk/list-of-recommended-investigators.

Acas guidance recommends that the investigator should:

- Be objective.
- Avoid nicknames and jargon and keep language appropriate and simple.
- Stick to the facts.
- Be concise.
- Include all evidence collected.
- Explain acronyms – don't take it that the reader (who could be anyone from the employee under investigation to a judge) will know what is meant by these.

Acas has an excellent pro forma that is recommended for use as the basis of any investigation report. It suggests using the following structure:

Introduction

- Names and job titles of the person who authorised the investigation and the investigator

- A brief overview of the reasons for the investigation
- The terms of reference. Include details of amendments made to these

The investigation process

- How the investigation was conducted
- What evidence was collected
- Reasons why any evidence was not collected
- Names and job titles of witnesses
- Why each witness was relevant
- Whether any witnesses were not interviewed, and why
- Whether any witness statements were anonymised and why, including details of any enquiries made into the witness's character and background

The findings

- A summary of the findings from all relevant documents and from each witness statement
- A list of facts that have been established
- A list of facts that haven't been established and why

It is important to distinguish facts that are uncontested from those that are contested. Where they are contested, the investigation report should set out the investigator's reasons for preferring one version of events over another. Where an allegation cannot be substantiated, the consequence of that should be set out: either the investigator cannot draw a conclusion from it, or further investigation is needed.

The report's conclusion depends on the terms of reference. A conclusion might include:

- A recommendation of what should happen next
- Any other recommendations

If the investigator has been asked under their terms of reference to make a recommendation about what should happen next, it should fall into one of the categories listed below. It should never include 'dismissal', 'demotion', or any other sanction. Those decisions belong to the disciplinary hearing.

These are the typical recommendations expected in the conclusion of an investigation report:

- **Formal action**, such as a disciplinary hearing. Formal action can also be about:
    - Making improvements because of issues raised during the disciplinary, grievance or poor performance investigation, for example, a change to a company policy.
    - Carrying out further investigation into something that has arisen during the initial investigation.
- **Informal action**, such as mediation, counselling or training.
- **No further action**.

Although an investigator is not required to make a recommendation, it is often helpful. They are closest to the evidence and usually have a strong sense of the most appropriate next step. There is no substitute for a well-

structured, detailed report that clearly summarises what the investigator did and why. The report should contain the investigator's conclusions alone, supported by the reasons underpinning them.

Any recommendations should be practical, realistic and actionable. The investigator must think carefully about how the employer is likely to view what they propose. Where relevant, they should also consider whether their recommendations are likely to help rebuild working relationships or, unintentionally, make tensions worse. The aim is not only to address the issues raised, but also to support a viable way forward for the team or organisation.

Finally, the report should include appendices containing copies of all key documents and witness statements that have been gathered and referred to in the findings. This makes the report easier to follow, allows decision-makers to check the evidence for themselves, and helps demonstrate that the conclusions are properly grounded in the material available.

Is that it for the investigator?

The investigator may need to talk through their report and findings with the panel to whom they are reporting, or with the employee under investigation. They may also be called as a witness at any subsequent disciplinary hearing. HR should explain this aspect of the role clearly, so the investigator understands that their job is to present the facts rather than give personal opinions or stray beyond their remit.

Employers should make the most of the expertise an investigator develops during the process. Investigators often gain valuable insight into how issues arise and how they might

be prevented. It is worth considering how their experience can help refine company policies and procedures. They may also be able to identify training needs or propose workplace initiatives that reduce the likelihood of similar investigations being needed in the future.

Dealing with the aftermath

Reaching a grievance decision may close the formal issue, but the period that follows a difficult disciplinary or grievance investigation can still be demanding. Even once the outcome is issued, at least one party may feel dissatisfied and raise a counter grievance. Where the subject matter clearly overlaps, the employer can proceed directly to hearing the second grievance without starting a new investigation. If the new grievance has little substance, the employer can acknowledge the concern, yet confirm that no further steps will be taken.

Both employees must understand that the grievance procedure is not designed to resolve personal disagreements. Mediation may be a more constructive path. Daniel Barnett discusses this on his podcast, Employment Law Matters (www.danielbarnett.com, season 4, episode 2).

If there has been no misconduct and the employer has followed a proper process, it is reasonable to be clear and bring the matter to a close. Nothing in law or guidance prevents employers from taking a practical, proportionate approach that avoids unnecessary delay.

If, after an unfounded complaint, the employee refuses to work with the colleague or manager they complained about, the employer may consider redeployment. However, where the investigation was thorough and found no wrongdoing,

the employer is entitled to require the employee to continue in their role. Many HR practitioners have seen individuals unsettle colleagues, including senior staff, by lodging repeated complaints. If the employee still refuses to work with others, disciplinary action can be appropriate. Employers must, however, avoid disciplinary action where the employee has raised a whistleblowing or discrimination concern in good faith because such action is protected. If there is no workable alternative, dismissal may ultimately be necessary.

Where a detailed investigation concludes that a complaint was baseless or even malicious, this can amount to misconduct or potentially gross misconduct. Proving malicious intent is difficult because it is rarely possible to identify an individual's true motivation. There is also a significant risk where the original allegation involved discrimination or whistleblowing. If the matter later reaches a tribunal, disciplinary action taken against the complainant could amount to victimisation or unlawful detriment, with costly consequences.

Employers also need to manage employees who repeatedly raise the same issues. There is no requirement to begin an investigation every time they do so. Unless the employee has a contractual right to an investigation, the employer should avoid complicating the process. If the matter amounts to a grievance, the employer can move straight to a grievance meeting to identify whether anything new has arisen. If not, it is entirely reasonable to confirm that the matter has already been addressed and invite the employee to appeal if they remain unhappy. Provided the process is fair, it does not need to become more complex.

Any investigation the employer carries out can also heighten tension. Alternative dispute resolution methods, such as mediation, counselling, clear-the-air meetings or even an informal conversation with a supportive manager, can often resolve or defuse conflict more effectively than a formal investigation.

Once an investigation ends, the organisation must still deal with the consequences. A fair process may settle the facts, yet it does not automatically repair the relationships affected by the allegation, the investigation or the outcome. Reintegration is frequently overlooked because managers focus on the formal result rather than the human and operational implications. Failing to plan for reintegration can weaken team cohesion, create ongoing resentment and, in some cases, trigger further grievances.

The first question is whether the employee under investigation will return to their post. If they were suspended, they may feel embarrassed, unsettled or concerned about colleagues' views. Even when the allegation is unsubstantiated, a suspension can leave a lasting impression unless the employer deliberately restores confidence. A return-to-work meeting is essential. The employer should explain the outcome clearly, confirm that the investigation is closed and reassure the employee that no negative assumptions are being made. This is also the stage to deal with practical matters, such as updating the employee on team changes or shifting priorities.

Confidentiality remains central. The employer cannot share details of the investigation with colleagues, but they can manage expectations by giving a neutral message that

the matter has concluded and that all employees are expected to act professionally. If the returning employee is joining a close-knit team, a manager may need to reinforce expected standards of behaviour across the group. Poor communication can fuel speculation and undermine the reintegration before it starts.

Where relationships have suffered, the employer should consider whether structured support is needed. This might include mediation, facilitated discussions or clear-the-air meetings. These interventions work best when they are offered early and framed as practical measures to normalise working relationships. They are not an admission that the employer mishandled the investigation. They simply recognise that conflict does not always end when a decision is announced.

A common challenge arises when the investigation finds no misconduct, yet the complainant remains dissatisfied. The employer must be clear about the finality of the process while remaining open to reasonable dialogue. Reopening the same issues repeatedly is unsustainable and can destabilise the team. If the complainant refuses to work with the exonerated colleague, the employer may need to consider redeployment. If that is not possible and the refusal continues, disciplinary action may be appropriate. The investigation is over, and the organisation cannot operate indefinitely around interpersonal conflict.

Where the investigation identifies wrongdoing, but the employer decides dismissal is not justified, reintegration can be even more difficult. The employer should set clear expectations, supervise workplace relationships and ensure that the employee understands the seriousness of the

findings. Support may also be required for colleagues affected by the misconduct. This is an operational response rather than a punitive one. The aim is to stabilise the team and avoid further issues.

Forward-looking action is equally important. Investigations often highlight structural weaknesses, such as unclear reporting lines, inconsistent working practices or weak leadership behaviour. Reintegration should therefore include organisational repair. This may involve reviewing policies, delivering targeted training or addressing workload or communication problems. A team that sees these issues being tackled is more likely to accept the outcome and move on.

Chapter 6
Further information and training

The best place to start is the *Acas Code of Practice on disciplinary and grievance procedures*, which is reproduced in full as an appendix to this book. It is concise, clearly written and sets out exactly what employers need to do.

Daniel Barnett's book, 'Resolving Grievances', provides detailed guidance on investigating and resolving grievances. Further information is available at go.danielbarnett.com/books/grievances.

If you are an HR professional, you might also consider joining the HR Inner Circle, the UK's leading organisation for ambitious HR practitioners. It is a support and training community run by Daniel Barnett (with Mike Clyne as a founding member), offering access to a network of like-minded HR professionals. More details are provided at the back of this book, or you can join at www.hrinnercircle.co.uk.

For employers wishing to outsource an investigation, the HR Inner Circle maintains a list of investigators who specialise in employee investigations. You can access this at www.members.hrinnercircle.co.uk/list-of-Recommended-investigators.

There are numerous organisations offering investigation training. A recommended trainer is Darren Newman (www.darrennewman.org).

Daniel Barnett also provides a two-hour training session for line managers on handling disciplinary, dismissal and performance management processes.

The training uses two case studies:

- Case Study 1 focuses on Ian and Marcus, a salesman and an IT technician at a large package holiday operator. They become involved in a fight in a pub, and there is a dispute about who provoked whom. The resulting disciplinary hearing is run by a line manager who does not understand the process, and it goes wrong at every stage. Daniel explains each of the manager's mistakes and demonstrates how to conduct a proper disciplinary investigation. He also illustrates the challenges line managers can face when questioned in a tribunal.
- Case Study 2 concerns Jane, a receptionist who has run reception and the conference room at a high street accountancy firm for 25 years. A younger partner wants to performance manage her out, while the older partners feel loyal to her. Daniel takes the audience through the steps needed for a fair and effective performance management process, including informal discussions, warnings, target setting and maintaining proper records. The situation becomes more complex when Jane raises a grievance midway through the process. This time, the manager follows the procedure correctly, and Daniel shows how to handle performance management the right way.

You can watch this training for free at go.danielbarnett.com/seminars/investigations. Daniel Barnett can also deliver the session in person at your organisation. For further information, email assistant@emplawservices.co.uk.

Appendix

Important note: the *Acas Code of Practice on disciplinary and grievance issues* was issued in 2015. It is expected to be revised in 2026 or 2027.

Code of Practice on disciplinary and grievance procedures

Published 11 March 2015

Foreword

The Acas statutory Code of Practice on discipline and grievance procedures is set out in paragraphs 1 to 47 below. It provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace.

The Code does not apply to dismissals due to redundancy or the non-renewal of fixed-term contracts on their expiry. See advice on redundancy.

The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on 16 January 2015. It comes into effect by order of the Secretary of State on 11 March 2015 and replaces the Code issued in 2009.

A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases.

Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code. This means that if the tribunal feels that an employer has unreasonably failed to follow the guidance set out in the Code they can increase any award they have made by up to 25 per cent. Conversely, if they feel an employee has unreasonably failed to follow the guidance set out in the Code they can reduce any award they have made by up to 25 per cent.

Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary or grievance issue. In some cases, an external mediator might be appropriate.

Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve an issue. However, where an issue cannot be resolved informally then it may be pursued formally. This Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most instances.

Employers would be well advised to keep a written record of any disciplinary or grievances cases they deal with.

Organisations may wish to consider dealing with issues involving bullying, harassment or whistleblowing under a separate procedure.

More comprehensive advice and guidance on dealing with disciplinary and grievance situations is contained in Discipline and grievances at work: the Acas guide. The booklet also contains sample disciplinary and grievance procedures.

Unlike the Code employment tribunals are not required to have regard to the Acas guidance booklet. However, it provides more detailed advice and guidance that employers and employees will often find helpful both in general terms and in individual cases.

Legal decision affecting section 16

When dealing with requests to postpone a disciplinary hearing to accommodate the attendance of a worker's companion, readers of the Code will wish to be aware of the Employment Appeal Tribunal judgement in the case of Talon Engineering Ltd v Smith. Guidance on this issue is contained in Discipline and grievances at work: the Acas guide.

The Code of Practice

Introduction

1. This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

- Disciplinary situations include misconduct and/ or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.
- Grievances are concerns, problems or complaints that employees raise with their employers. The Code does not apply to redundancy dismissals or the non-renewal of fixed-term contracts on their expiry.

2. Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.

3. Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not

be practicable for all employers to take all of the steps set out in this Code.

4. That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act consistently.
- Employers should carry out any necessary investigations, to establish the facts of the case.
- Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.
- Employers should allow an employee to appeal against any formal decision made.

Discipline: Keys to handling disciplinary issues in the workplace

Establish the facts of each case

5. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the

investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

6. In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.

7. If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer's own procedure.

8. In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

Inform the employee of the problem

9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

10. The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting. Hold a meeting with the employee to discuss the problem.

11. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

12. Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

Allow the employee to be accompanied at the meeting

13. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action
- the confirmation of a warning or some other disciplinary action (appeal hearings)

14. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any

companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

15. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, a worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

16. If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

17. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer

questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

Decide on appropriate action

18. After the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing.

19. Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.

20. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

21. A first or final written warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). The employee should be told how long the warning will remain current. The employee should be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final warning. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.

22. A decision to dismiss should only be taken by a manager who has the authority to do so. The employee

should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

23. Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.

24. Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence or serious insubordination.

25. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

Provide employees with an opportunity to appeal

26. Where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing.

27. The appeal should be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case.

28. Workers have a statutory right to be accompanied at appeal hearings.

29. Employees should be informed in writing of the results of the appeal hearing as soon as possible.

Special cases

30. Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

31. If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

Grievance: Keys to handling grievances in the workplace

Let the employer know the nature of the grievance

32. If it is not possible to resolve a grievance informally employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.

Hold a meeting with the employee to discuss the grievance

33. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.

34. Employers, employees and their companions should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.

Allow the employee to be accompanied at the meeting

35. Workers have a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the worker. So this would apply where the complaint is, for example, that the employer is not honouring the worker's contract, or is in breach of legislation.

36. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who

is suitable, willing and available on site rather than someone from a geographically remote location.

37. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain time frame. However, a worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

38. If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

39. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

Decide on appropriate action

40. Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.

Allow the employee to take the grievance further if not resolved

41. Where an employee feels that their grievance has not been satisfactorily resolved they should appeal. They should let their employer know the grounds for their appeal without unreasonable delay and in writing.

42. Appeals should be heard without unreasonable delay and at a time and place which should be notified to the employee in advance.

43. The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case.

44. Workers have a statutory right to be accompanied at any such appeal hearing.

45. The outcome of the appeal should be communicated to the employee in writing without unreasonable delay.

Overlapping grievance and disciplinary cases

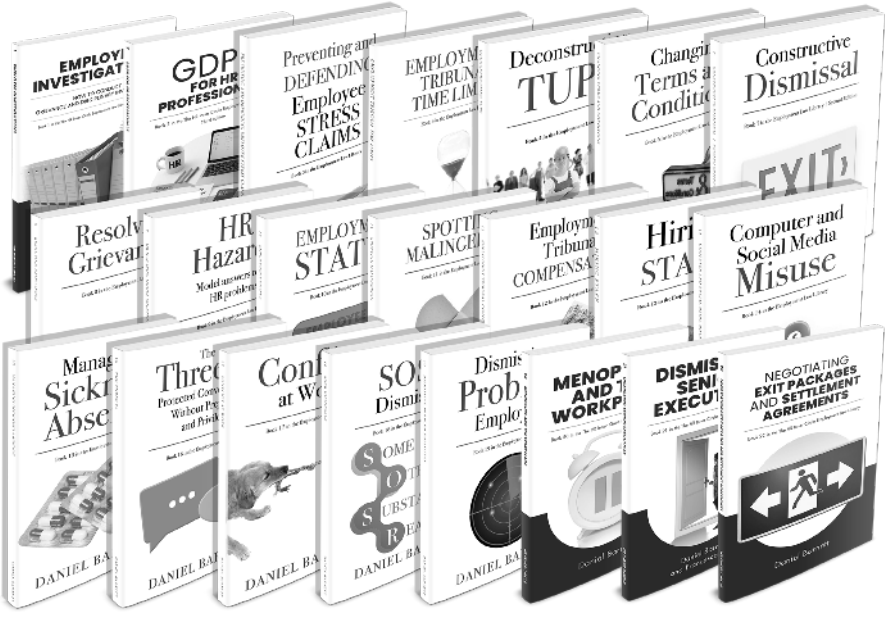
46. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance.

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Collective grievances

47. The provisions of this Code do not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union or other appropriate workplace representative. These grievances should be handled in accordance with the organisation's collective grievance process.

Also by
Daniel Barnett



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LBC LEGAL HOUR

— OR CATCH UP VIA THE GLOBAL PLAYER,
AT bit.ly/lbclegalhour

SATURDAYS, 9PM

Dear HR Professional,

I take my hat off to you.

Having supported the HR community for so many years, I know It's a challenging job you do, sometimes under really difficult circumstances.

The tricky HR issues you have to handle must take up a tremendous amount of your time, your energy and your brain power. I bet it can be exhausting for you to work under that level of pressure.

Being An HR Professional In Today's Business Environment Is TOUGH!

Maintaining your high standards of professionalism must be a real struggle, especially when your efforts and expertise often go unappreciated.

I'll wager you have to make decisions on challenging HR situations you've sometimes never encountered before. Even if you're part of a team, it must sometimes feel like you're working in isolation.

With so much complexity and ambiguity, do you ever find you're not clear whether you're doing the right thing when there's so much to think about?

I expect it can be draining too. You've got to make tough decisions which may be unpopular.

The pressure's on you to ensure people are treated fairly while the business complies with its legal obligations.

It's a thankless task, especially if you've got grief coming at you from all sides.

Doubt can creep in too. Even though you're an extremely competent professional, you might even begin to question yourself... What if you've got it wrong?

You've got to cope with all that, whilst constantly having to convince any doubting stakeholders you're adding value to the business.

That pressure must take its toll on you.

You wouldn't be human if it didn't cause you tension, stress or even worse!

Being the caring professional you are, I bet you often take work home with you.

If You're Not Careful The Stress WILL Creep Up On You

And I don't just mean opening your laptop on your couch when everyone else is watching Eastenders.

We all know of families and relationships that come a poor second to the pressures and challenges faced at work.

Yours too..?

But does it have to be that way?

Should you feel the responsibility of the HR world is entirely on your shoulders and that you've got to bear that burden alone?

The answer is a firm no.

It doesn't have to be like that.

There Is An Answer To Help Make Your Work & Your Life Much Easier For You

There's a place you can get all the help, support, advice and encouragement you need to ease the constant pressure you have to bear.

It's called the HR Inner Circle.

It will lift the burden you're carrying by giving you swift access to comprehensive resources and live practical guidance you can implement right away.

It's information I know will save you time, energy and effort.

It's a vibrant, active community of caring, like minded HR professionals willing to help you.

There are resources packed full of practical, actionable advice for you that's difficult to find anywhere else.

And it doesn't matter what you're working on.

Whether it be workforce engagement, attracting and keeping talent, diversity and inclusion or employee health and well being, you'll find support for all of that.

You're covered even if you're working on one of those tricky, sensitive, people problems you never see coming until they land squarely on your plate.

Timely Support To Make Your Job Easier, Can Be Rapidly Found In The HR Inner Circle

As a member of the HR Inner Circle, to get the support you want…

…just ask.

Your first port of call is the vibrant Facebook group, bursting at the seams with incredible HR professionals like you.

Just post your question and let it bubble and simmer in the collective genius of the group.

By the end of the day, you'll have at least 3-5 comments on your post, often more.

You'll get relevant, insightful and practical guidance that comes from the hard earned experience of your fellow members.

Often you'll get a response within a couple of hours. Sometimes you'll get an answer within minutes - even if it's late in the evening!

This highly active community never fails to astound me with just how willing they are to help fellow HR professionals like you.

They readily and generously share their hard earned knowledge and experience.

You Can Get Answers From Real People Quickly AND From Our Extensive Resource Library Too

> "…really important for someone working on their own who needs to check things out, or just bounce a few ideas around."
>
> - Quentin Colborn
> Director, QC People Management Ltd

While you wait for a response from the Facebook group, you'll likely find answers in the resource-rich members' vault on our secure online portal as well.

It takes just 2 clicks and a quick keyword search using our Rapid Results Search Tool.

You'll instantly find precisely where your topic is covered in our extensive back catalogue of monthly magazines and audio seminars.

In under 30 seconds you can find exactly what you're after.

It's that quick and easy.

…And if you need a specific legal insight?

Then pose your question live to an expert employment lawyer in our monthly Q&A session.

It'll either be me or one of my prominent contemporaries. You'll get your answer immediately without having to pay any legal costs.

If you can't wait, you'll find where it's been answered before with a quick search of previous Q&A sessions.

Our clever index system means you can find a question, and in a single click get straight to the recorded answer.

But perhaps you need to dive deep and explore the different options open to you to solve a particularly tricky problem?

Then join one of our monthly HR Huddles. There you can run your specific situation past other HR professionals.

They'll offer their insights, share their experience and work WITH you to find a solution that works FOR you.

You'll find all of this in one convenient place - the HR Inner Circle.

It's Been A Labour Of Love Putting The HR Inner Circle Together So It Works For Professionals Like You

> It's great to see that we all experience tricky cases from time to time.
>
> - Annabelle Carey
> Managing Consultant, HR Services Partnership

I've spent years practising law and have become recognised as one of the UK's leading employment law barristers. I've even got my own radio show!

But more importantly for you, I've also developed another skill.

It's bringing useful employment expertise AND practical experience together in a way that supports busy, overworked (and sometimes stressed) HR professionals like you.

Everything you're likely to need is **literally at your fingertips**.

This will save you **time**, **energy** and **effort**.

Being a member also means your business and clients will see you as even MORE INFORMED about the intricacies of employment law.

They'll marvel at how well you keep up to date when you're busy working so hard for them.

You'll be seen making quicker decisions and implementing effective solutions to accelerate the growth of the organisation.

You'll make impressive time and cost savings for the business.

And those tricky, off-piste situations you've never come across before..?

Well, nothing will faze you, because you're backed up by an HR support system second to none.

But more importantly, you'll feel that pressure gently ease off.

With the relief you'll feel knowing that such great help and guidance is just a few minutes, you'll wonder how you survived without it!

That's Why I'm Inviting You To Join And Reap The Many Rewards Of Membership

WWW.HRINNERCIRCLE.CO.UK

Here's what you get when you join the HR Inner Circle:

Benefit #1- you'll get unlimited access to the hugely popular HR Inner Circle Facebook Private Group

- Tap into the vast wealth of knowledge, experience, insight and wisdom of the top 0.5% of your profession at any time, day or night.
- In less than 5 minutes you can post ANY HR question and get insightful answers and suggestions in a couple of hours or less, from some of the best in your profession.
- Fast track your impact by discovering effective shortcuts and workarounds from HR people who've been "there" and done "it".
- Expand and deepen your network of like minded individuals, secure in the knowledge they're as dedicated and as ambitious as you.

- Increase your prestige with your colleagues and stakeholders by being part of such an exclusive and prominent HR community.
- Gain confidence in your judgment and decisions by using the highly responsive community as a sounding board for your ideas.

Benefit #2 - you'll receive 11 copies of the HR Inner Circular Magazine every year

- Enjoy that satisfying "THUD" on your door mat every month when the postman delivers your very own copy of the HR Inner Circular magazine.
- Quickly discover exactly what the law says about key issues affecting HR professionals around the UK like you.
- Get concise and practical guidance on how employment law applies to the challenging situations and circumstances you deal with every day.
- Avoid the mistakes of others by applying the lessons from the in depth analysis of real life case studies.
- Benefit from a legal deep dive by the UK's leading employment law barrister into a topical employment question posed by a fellow member (perhaps you!).
- Review a summary of recent important Facebook Group discussions worthy of sharing, that you may have missed.
- Explore a range of related and relevant topics useful for your practice and your broader professional development.

> The magazine is really informative, the Facebook group such a community, and I think exceptional value for money.
>
> - Lis Moore
> Head of Advisory & Support Services,
> Society of Local Council Clerks

Benefit #3 - Monthly Audio Seminars

- A 60 minute legal deep dive by me into an important subject relevant to you and your practice.
- Professionally recorded content recorded exclusively for the HR Inner Circle - you'll not find this information anywhere else.
- Carefully structured content that's easy to consume, understand and apply in your work as an HR professional.
- Episodes delivered every month so you can stay current on the latest issues affecting HR professionals.
- The convenience of listening to the recording online or downloading the mp3 for later enjoyment at a time suitable to your busy schedule (perfect for any commute).

Benefit #4 - you get an exclusive invite to a live online Q&A Session every fortnight, led by an expert employment lawyer

- Gain 60 minutes of live and direct access to the sharpest legal minds from my secret little black book of contacts.
- Get answers to your knottiest employment law questions, and solutions to your trickiest HR problems, from some of the brightest employment lawyers in the UK.
- Avoid having to pay the £300-£400 it would cost you to ask a lawyer your question outside of the HR Inner Circle.
- Benefit from valuable insights from the answers given to other members.
- If you can't attend live, watch the recording when it's convenient for you.
- Quickly access the recorded answer to any question asked in the session by simply clicking the question index for that session.

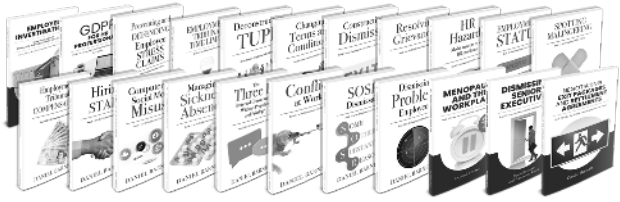
- Save time by downloading the session transcription to scan-read at a time suitable for you.

Benefit #5 - join a live Monthly Huddle with other HR Professionals to solve your most challenging HR problems

- Attend your very own mini-mastermind group of highly qualified, highly regarded and experienced fellow HR professionals to "group think" through an issue you're facing right now.
- Develop bespoke solutions to the unique problems and challenges you have to deal with in a safe, supportive and confidential environment.
- Feel safe knowing these online zoom calls are NOT recorded to respect the sensitivity of issues addressed and the privacy of those involved. [NOTE - a professional transcriber attends and takes written notes. An anonymised summary is then made available to the membership]
- Recent Huddle topics included changing employee benefits, mandatory vaccination, career breaks, sickness during disciplinaries, effective worker forums and hybrid working arrangements.

Benefit #6 - access our Templates & Resources Centre

- Gain immediate access to our library of the most popular and frequently used forms, assessments, agreements, checklists, letter templates, questionnaires and reports to help the busiest HR professionals save time and get things done quicker and easier.
- Download them as Word documents, so you can edit and personalise them to fit your business needs
- New templates added every single month



Benefit #7 - build your own Employment Law Library

- We send you several brand-new books on employment law several times each year
- Acquire your own physical library of concise, easy-to-read and fully updated textbooks
- Recent titles include Hiring Staff, Managing Sickness Absence, Spotting Malingering and Resolving Grievances

Benefit #8 - free Ticket to our Annual Conference

- The perfect opportunity to extend your personal network of fellow HR professionals.
- Meet up face to face with the people who've been supporting you in the Facebook Group and HR Huddles so you can deepen those connections even further.
- Gather key insights and takeaways to help you personally and professionally from some of the best speakers on the circuit. Previous speakers have covered motivation, dealing with difficult people, goal setting and productivity, decision making and social media marketing.
- Get instant access to recordings of all previous conferences so even if you can't attend in person, you can benefit from the event in your own time.
- Includes probably the best conference lunch you'll ever have - a bold claim I know, but we use outstanding caterers.

> "It never ceases to amaze me the amount of time and effort people put into the Facebook group, sharing their experiences, advice, and sage words of wisdom."
>
> - Emma Lister
> HR Consultant, SME HR Services

Benefit #9 - your Personal Concierge will help you get the best out of your membership

- You get personal access to Nina who'll point you in the direction of exactly where to find what you need. She's supported hundreds of members over the 5 years she's been part of the team.
- Nina also works closely with the 11 back office staff that support the operation. In the extremely unlikely event she doesn't know where something is, she knows who will.

HOW MUCH DOES JOINING THE HR INNER CIRCLE COST?

There's no doubt in my mind the annual value of membership benefits is in the many thousands of pounds range.

But you're not going to pay anywhere near that.

Let me remind you of what that small monthly fee gives you every year

Access to the private Facebook Group	INCLUDED
HR Inner Circular Magazine subscription	INCLUDED
Monthly Audio Seminars	INCLUDED
Live Q&A sessions	INCLUDED
Monthly HR Huddles	INCLUDED
Templates & Resources Centre	INCLUDED
Employment Law Library	INCLUDED
Free ticket to the HR Inner Circle Annual Conference	INCLUDED
Your Personal Membership Concierge	INCLUDED

TOTAL PRICELESS

Another way of looking at your investment is this:

Because access to what you need is so quick…

Join today and that price is fixed for as long as you remain a member. You'll always pay the same, even if we increase the price to new members (which we regularly do).

…it's like having your very own part time, legally trained, assistant HR Business Partner, just waiting to provide you with all the answers you need…

WWW.HRINNERCIRCLE.CO.UK

Plus, With Membership Of The HR Inner Circle, You'll Also Get These 4 Additional Resources For FREE!

Additional Resource #1 - Handling Awkward Conversations

A video case study masterclass you can share with managers to train them to handle awkward staff disciplinary, performance and attitude problems. A huge time saver for you.

Additional Resource #2 - 6 x HR Employment Online Courses

Immediate, on demand access to six thorough, online HR courses (with more constantly added), including Employment Tribunal Compensation, Chat GPT for HR Professionals, Deconstructing TUPE, Changing Terms & Conditions, Unconscious Bias At Work and Handling Grievances.

Additional Resource #3 - Free listing on the Register of Investigators

Advertise your professional investigations service in our member's portal.

Additional Resource #4 - Significant discounts on sets of policies, contracts, and other courses.

Get member discounts on my Getting Redundancy Right and HR Policies products as well as other price reductions as new products are released.

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> It's a really good investment. The support you get from other Facebook group members is fantastic. Whatever your question, someone will know the answer. Access to Daniel's experience and knowledge through the podcasts and Q&A is invaluable too.
>
> - Tracy Madgwick
> HR Consultant, Crafnant HR

I'm So Confident Joining The HR Inner Circle Is The Right Decision For You, Here's My

Take action and join the HR Inner Circle **now**.

If you're not 100% satisfied with your investment, you can cancel at ANY time.

Just tell us, and your membership will end immediately. No long-term contracts. No notice periods. No fuss.

I'm comfortable doing this because I know once you join, you'll find the support, the information and the strategies so useful, you'll never want to leave.

Before you decide though, let me be very clear about membership of the HR Inner Circle.

It's only for ambitious and dedicated HR professionals who want to accelerate and increase their impact by plugging into an HR ecosystem with its finger firmly on the pulse of what's working right now in HR.

If you're just plodding along and are content with just getting by, then this is probably not for you.

But if you're drawn to benefiting from standing shoulder to shoulder with some of the giants in the HR community who will help you solve your toughest problems, then joining the HR Inner Circle is the RIGHT decision for you.

Join here now:

WWW.HRINNERCIRCLE.CO.UK

JOIN TODAY

Daniel Barnett

P.S. Remember when you join you get unrestricted access to the private Facebook group, the monthly magazine delivered direct to your door, the monthly audio seminar, regular free books, templates, checklists and resources, on-demand video courses, over 100 audio seminars and back copies of magazines, live interactive Q&A sessions with a lawyer, focused monthly huddles with other HR professionals, a free ticket to the annual conference, your personal concierge plus a bunch of additional resources…