



Members' Services Team

Conducting Investigation

House of Commons
Members' HR Advice Service
Members' Services Team



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Introduction

This document forms part of a collection of best practice guides created by the Members' HR Advice Service which sits within the Members' Services Team. The guides are designed to support Members in their roles as employers and give practical, step by step advice on employment practices. You are invited to follow this guidance, in conjunction with guidance from the Advisory, Conciliation and Arbitration Service (ACAS) and the Independent Parliamentary Standards Authority (IPSA) standards and rules.

We are mindful that there are still a small number of pre-IPSA contracts which are in operation, and they may have slightly different terms and conditions. It is always best to check the wording of any contract before considering changes effecting workers conditions.

We understand that there is a lot of information to go through, and whilst we encourage all Members and staff to first refer to this document, further support on any aspect of this document can be obtained from the Members' HR Advice Service, part of the Members' Services Team, on 0207 219 2080 or **membershr@parliament.uk**.

Members staff are also able to contact the Members staff engagement team at MST@parliament.uk or on 0207 219 4141 if they require further information on this guide.

Whilst every attempt has been made to ensure its accuracy, this document is for guidance purposes only in order to provide Members with general information and an understanding of HR best practice. This document should not be construed as legal advice or used as a replacement for advice from the Advisory, Conciliation and Arbitration Service (ACAS).

Summary

This best practice guide provides information to Members (and Office Managers) on the steps that should be taken when conducting investigations, including practical guidance on dealing with witnesses and documents, and suspension during investigation. While disciplinary investigations may be the most common form of investigation, much of the guidance would apply equally to other situations where an investigation may be necessary, for example on receipt of a grievance or where an employee is underperforming or suffering from stress.

An investigation is the first step in addressing your concerns as a line manager about an employee, or a concern or request that an employee has raised with you. The key purpose of an investigation is to discover all the relevant facts and information in a fair, reasonable, and objective manner. If you are confronted with a situation that needs to be actioned but fail to carry out a proper investigation within a reasonable timeframe, it could lead to valuable evidence being destroyed and potentially costly tribunal claims for discrimination, unfair dismissal, and breach of contract.

The necessary length and detail of an investigation will depend on the circumstances. There will be a number of situations where an investigation might be necessary including:

- When an issue of alleged misconduct has been raised about an employee, in order to ascertain whether or not formal disciplinary proceedings should be commenced;
- If you are concerned about a poorly performing employee;
- On receipt of a grievance, for example when an employee alleges that they should have been promoted over a colleague;
- On receipt of a customer (constituent or service provider) complaint about an employee;
- When alerted to a problem between colleagues; and
- When alerted to an employee experiencing stress.

If the nature of the situation being investigated appears to be serious or if the informal stage has been exhausted and/ or is not appropriate, it may be necessary to take formal action. This document provides guidance about the best practice approach to investigations in line with the [ACAS Code of Practice on disciplinary and grievance procedures](#).

The legal background

The Employment Rights Act 1996 provides employees with the right not to be [unfairly dismissed](#). If an employee is dismissed following disciplinary proceedings and claims unfair dismissal in the employment tribunal, the tribunal will closely examine whether the employer followed a fair procedure. A **reasonable investigation** is a fundamental aspect of a fair procedure.

In most cases the employee must have two years' continuous service with their employer to qualify to bring a claim for unfair dismissal. However, there are numerous exceptions where an employee does not need to have 2 years' service to claim automatically unfair dismissal, these include but are not limited to pregnancy or maternity, whistleblowing, exercising legal right, and discrimination.

In assessing whether an employer followed a fair procedure, the tribunal will look to see whether the employer's conduct in dismissing the employee fell within the range of reasonable responses to the reason for dismissal. An employment tribunal would assess whether the employer followed a fair procedure, often by reference to the [ACAS Code on Disciplinary and Grievance procedure](#).

The above is also relevant if the employer took action other than dismissal, such as issued a warning or demoted the employee, leading to the employee resigning and bringing a claim at tribunal for constructive dismissal (with more than 2 years' service) and/or discrimination against them, where 2 years' service is not a prerequisite for tribunal action. Again, the tribunal would want to see evidence of a fair procedure and that includes the steps taken to investigate before taking action.

The Burchell test

When an employment tribunal is trying to decide whether a dismissal for misconduct is fair or unfair, a key case they will look at is that of *British Home Stores (BHS) v Burchell*, which is the basis for the Burchell test. Essentially, this test considers the assessment of reasonableness of an employer's actions when dismissing an employee for alleged misconduct to three questions:

1. Whether the employer reasonably believed that the employee was guilty of misconduct?
2. Whether the employer had reasonable grounds on which to base that belief?
3. Whether it has arrived at that decision after conducting a reasonable investigation?

In summary, absolute proof of misconduct is not necessary. So long as the employer genuinely believes the employee is guilty of misconduct, the grounds for the employer's belief are reasonable and the employer has carried out a sufficient investigation into the facts as is reasonable, that is enough.

Keynote - Balance of Probabilities vs Beyond a Reasonable Doubt

In criminal proceedings the standard of proof must be “beyond reasonable doubt”. The court must be convinced that there is “no doubt” that something is true. This is the case because the consequences of a person being found guilty in a criminal matter usually involves a more serious outcome i.e., a life-long prison sentence. In cases involving private or civil rights the burden of proof is on the claimant who must prove that on the “balance of probabilities” their case is true. This means the court must be satisfied that on evidence, the occurrence of an event was more likely than not. The potential consequences in a civil matter will usually involve an order to pay money.

Positive work environment

Line managers are instrumental in creating and maintaining a positive working atmosphere. For example, if a manager takes grievances raised seriously and properly investigates them, employees will feel that they are treated fairly and that their concerns are addressed, which can help to build confidence and trust in the employee.

Where an employee raises a grievance, even if you are confident that the outcome will not be what the employee was hoping for, you should still carry out a thorough investigation to demonstrate that the employee is valued and that their concerns are understood.

Where you suspect that an employee has committed an act of misconduct, if the employer brings disciplinary proceeding against the employee without having conducted a thorough investigation, not only might this give the employee cause to make a claim in the employment tribunal, but it would also erode their trust and confidence in the employer.

Sense checking

The Member or Office Manager should first sense check the situation before deciding whether to investigate further. The purpose of this is to sense check the facts and ensure there hasn't been a misunderstanding that explains the situation, and therefore an investigation is not required. This can save everyone a lot of stress, work and upset if there is found to be a reasonable explanation.

In an informal meeting the Member or Office Manager should inform the employee of the nature of the problem and follow this up in writing afterwards. Although the meeting is informal, a note should be taken capturing the key points which can be circulated to the employee afterwards to sign. In the meeting the Member or Office Manager should explain the recent concern that has come to light and ask the employee to talk through what has happened, probing further if necessary.

After the meeting the Member or Office Manager should confirm a note has been taken and they will get back to the employee if they need to discuss the matter further. If no further action is needed the notes from the cursory meeting can be destroyed. If you are unsure how to approach the initial conversation or next steps, please contact the [Members’ HR Advice Service](#) to discuss.

Stage 1: Preparing for an investigation

Is an investigation necessary?

In the first instance the Member or Office Manager should consider whether a quiet word or informal action may be all that is required to resolve a matter. Most problems that arise can be settled quickly and without undue process. Where informal resolution is not practical or possible there are a number of considerations that the Member or Line Manager should bear in mind when deciding if an investigation is necessary.

Consideration before making a decision	
Do any policies or procedures require an investigation? Your policies and procedures may obligate you to conduct a formal investigation on the matter under consideration.	For example, if your office policy clearly states that all reported incidents of theft should be fully investigated, the policy should be followed.
Does the matter warrant further action? If you are not obligated to investigate the matter, whether one is necessary will often come down to the seriousness of the matter and what type of action may be warranted.	For example, if your office policy isn’t clear or you don’t have a policy in place on how to approach an allegation of bullying, the incident is still likely to require some degree of investigation because it may warrant disciplinary action.
Will a preliminary investigation help? Where it is uncertain whether a full investigation is necessary or appropriate, you may benefit from trying to find this out first. Usually this would be limited to gathering appropriate evidence on the matter.	For example, if the Line Manager hears rumours that one employee in their team is purposely disconnecting calls from constituents. A preliminary investigation could gather data on this and determine if there is a trend that may warrant a full investigation.

If an investigation is necessary, then the Member or Line Manager should act promptly. Unnecessary delay may cause memories to fade or give the perception of an unfair process. Throughout each stage of the process, an informal resolution of the matter should be considered as an option, if appropriate.

Keynote!

In Members' HR we often find that having an employee handbook is not something most Members of Parliament necessarily have, and we hope our [best practice guide on Creating a Staff Handbook](#) that includes an assortment of draft policies and procedures will help Members put together their own HR policies for their team.

In the absence of office policies and procedures, it is important the [ACAS Code of Practice on disciplinary and grievance procedures](#) is followed.

If you have any questions regarding the processes and procedures, please contact the [Members' HR Advice Team](#).

Timescales

Investigations should be conducted within a reasonable timeframe. This is important to ensure that witness's recollections remain fresh and accurate, and to obtain useful documentation that might otherwise be destroyed. For example, you might need to review CCTV footage quickly because tapes are usually kept for a fixed-period of time, and emails or any other computer-based evidence might be permanently deleted in a short space of time. Allowing an investigation to become too protracted, or allowing it to stall, may be enough to render any related dismissal(s) unfair.

Generally, an investigation should be completed within three to four weeks. If this does not seem possible or something happens that is likely to delay the investigation, the Member or Office Manager should inform the employee of any delays in proceedings.

Confidentiality

Keeping matters confidential is essential to maintaining the integrity of the investigation thereby ensuring employees, whether those having allegations made against them, or witnesses, or those making complaints, are not treated unfairly and that the employer does not breach trust and confidence with them.

If the information about the investigation is leaked, not only will the investigation be rendered unfair, but the employee may resign claiming they have been constructively unfairly dismissed. The investigation plan should include a list of who needs to know about the investigation, what they need to know and when they need to know it.

Having identified the individuals who should be interviewed, consideration must be given to the extent of information to be revealed to witnesses. It is important that witnesses are not given information about the alleged incident that they are unaware of as this may lead to them making assumptions about what has happened rather than

concentrating on the facts they know. As the interview process, it may be necessary to release more information to the witness to help them remember events.

Terms of reference

When instigating an investigation, the Member or Office Manager should decide what the precise purpose and scope of the investigation will be. At the outset of an investigation, the person appointed as the investigator (usually the Office Manager/HR proxy) must be clear about the terms of reference of the investigation. Having a clear idea of the scope of the investigation will ensure that the investigation stays within the defined parameters.

Terms of reference should clearly explain what the investigator's role and responsibilities are for this investigation. The terms of reference should spell out:

- What the investigation is required to examine
- Whether a recommendation is required
- How their findings should be presented. For example, in an investigation report.
- Who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed. For example, contacting the Members HR Advice Team.

During the course of an investigation facts that are related to, but not directly relevant to, the investigation may be uncovered. Having clear terms of reference will enable the investigator to identify the issues relevant. If other complaints or issues are raised that are not directly linked, these can be parked and investigated separately at another stage.

Who should carry out the investigation?

Where possible an employer should get somebody who's not involved in the case to carry out the investigation, for example another manager. This is to keep things as fair as possible. In smaller organisations, such as an MP's office, the employer might have to do it themselves.

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

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

However, Members' offices are considered small businesses, as usually there are only around 5 employees working for each Member. Therefore, it is not always possible to appoint a different person to each stage of the process without the whole office

becoming involved, which would not be appropriate, and breach confidentiality. In the first instance the Member should consider who could investigate the situation in a fair and objective way to ensure impartiality is maintained. Usually, the Members HR Proxy (i.e., Office Manager or Chief of Staff) will be the most appropriate person. The Office Manager/HR proxy would undertake the investigation and make recommendations on next steps and the outcome in the investigation report. It would then be for the Member, as the employer, to make the final decision on the outcome and hear any appeal received.

In cases where the Member is carrying out the investigation and deciding on the outcome, we would highly recommend they seek an independent person i.e., an external HR consultant to hear any appeal received. This is to help add a layer of impartiality to the process. Please discuss with Members' HR Advice before arranging an independent HR professional and also check with Ipsa you have the budget to cover any expenses - before to commit to any services. Ultimately only the MP as the employer can make any decisions about employment.

If you are unsure who to appoint as investigator, please contact the [Members HR Advice Team](#) to discuss.

Keynote – What to consider when choosing an investigator

- Are they personally involved in the matter being investigated?
- Would the appointment raise any conflict-of-interest concerns?
- Are they likely to be influenced by people involved in the matter?
- Might they be involved in any subsequent decision making on the matter?
- Do they have a good knowledge of the business and how it operates?
- What is their availability during the investigation's provisional timeframe?
- Are they trained and/ or experienced in how to conduct investigations?
- How confident are they at communicating in writing and/ or orally?
- What training or support may they require?

Temporary measures

In most situations an investigation can be conducted without removing an employee from their typical working environment. On occasions, the Member or Office Manager may need to consider putting other temporary measures in place while an investigation is conducted. Temporary measures to consider could include:

- changes to shift pattern
- work in a different part of the business
- work from home
- work from a different office or location

- stop doing part of their job – for example, stop the employee handling IPSA expense claims, if you’re investigating a large number of claims that haven’t been processed.
- Ensure the employee does not deal with that specific case or any related to it – for example if you’re investigating a serious complaint from a constituent.
- stop using a specific system or tool – for example removing access to the finance system if you’re investigating a large amount of missing money.

You should keep the reason for any temporary change confidential wherever possible. You should also discuss with the employee what you’ll tell others at work about the temporary change, bearing in mind the need for confidentiality.

Suspension

In some circumstances, it may be necessary to suspend an employee with pay for a short period pending the outcome of the investigation. Suspension can have a significant effect on working relationships and the mental health of the people involved. Therefore, the Member or Office Manager should consider carefully before deciding whether to suspend someone, and it should be treated as a last resort.

When suspending an employee, it should be made clear to the individual that suspension is temporary, not an assumption of guilt and not a disciplinary sanction. You should only consider suspension if you reasonably believe it would protect any of the following:

- the investigation – for example if you’re concerned about someone damaging evidence or influencing the witnesses.
- the business – for example if there’s a genuine risk to your customers, property, or business interests.
- other staff
- the person under investigation

Once you have enough information, carefully consider what you’ve found. This can help you decide whether suspension is a reasonable way of dealing with the situation. If a decision to suspend is not reasonable, there’s a risk you could be breaking the employment contract, and this could lead to legal action. ACAS have developed further guidance on [suspension during an investigation at work](#). The Member or Office Manager can also contact the [ACAS helpline](#) for more advice if you’re unsure whether suspension is appropriate.

If more than one employee is involved in the potential investigation, you would need to be clear why you are suspending one and not the other. Just suspending one employee could be perceived as your making your mind up about an outcome before the process is complete.

Whilst any employee is suspended it is important to keep in regular contact with them and, not only check on their wellbeing, but to ensure they are clear if they are still suspended from work or not. Usually, suspension from work is accompanied by suspension from access to Parliamentary networks and the caseworker system. It is important, therefore, to ensure you have up to date contact details – a telephone number, home address and a personal email address for the employee. This will enable you to keep in touch and send them any letters or documents.

Should an employee who is suspended from work report that they are unwell it is important that they are marked sick on the Ipsa pay and personnel system. In this situation the suspension paid leave would change to sickness absence leave for the period they report sickness. The employee should provide fit notes promptly, as they would for any sickness absence, and there should be the same duty of care demonstrated by the MP or the person designated to keep in touch as there would be for any other team member. If in doubt about managing the sickness absence, please contact [Members' HR Advice](#) for guidance.

Keynote!

Before suspending an employee, please contact the [Members HR Advice Service](#) to discuss further. We will help you look at whether suspension is appropriate, or if any alternative temporary measures can be put in place while the investigation is ongoing. If suspension is appropriate, we will support with putting together a suspension letter to the employee covering all the key points.

Criminal proceedings

Some matters might warrant a criminal investigation. Usually, the employer would need to decide whether or not to involve the police. However, some employers will be obligated to raise some matters to the relevant authorities. For example, an organisation that works with children or vulnerable adults may have safeguarding procedures that require the local authority to be informed in certain circumstances. An employer should check any relevant policies and procedures they might have in place before deciding whether or not to inform the police.

Members' and Office Managers may more likely find themselves in a position where it is brought to their attention that an employee may have been involved in a situation outside of the workplace where a police investigation or criminal proceedings are taking place. In these circumstances, please contact the Members HR team to discuss the best course of action and next steps.

A police investigation or criminal proceedings may affect security clearance and should be brought to the attention of the security vetting team. As this can be a sensitive issue,

we would advise the Member or Line Manager to contact the [Security vetting's management email](#) rather than the vetting team's generic inbox.

In addition, if an employee informs you, the police have taken their IT equipment i.e., laptop, and will be retaining the equipment for the purpose of their police investigation, you must notify the [Parliamentary Digital Services](#) and [Members' HR Advice Team](#) as soon as practical.

If a criminal proceeding does commence, the Member as the employer may decide it is reasonable to carry out their own investigation. An investigation would be reasonable in a situation where the Member could be brought into disrepute or others could be put at risk.

Please contact the [Members' HR Advice Team](#) if you become aware your employee is subject to a police investigation or criminal proceedings to discuss.

Stage 2: The investigator's preparation

Investigation plan

Before the Member or Office Manager starts the investigation, it can be helpful to prepare an investigation plan which provides the person investigating with a structured approach to follow. This can help focus on:

- what facts need to be established
- what evidence needs to be collected
- completing the investigation within the provisional timeframe

It can also set down who will be conducting any subsequent discipline or grievance hearing (if necessary), whether suspension should be considered (where relevant), who needs to be interviewed, what documentation or other evidence is required and what the timescales are. The investigation plan may need to be modified as and when further evidence comes to light that might be relevant to the investigation.

A template example investigation plan can be found in **Appendix 1**.

Evidence

The Member or Office Manager should try and get all the information they reasonably can and need for the case. Each investigation will be different and the facts and information that need to be collected will differ. When identifying what may be relevant, they should consider:

- what is laid out in the investigation plan
- what sources of information they can use to establish the facts of the matter

- how evidence can be collected
- whether there are any time constraints for collecting the evidence such as a witness going aware on annual leave or CCTV records getting deleted after X days.

More evidence may come to light as the investigation goes on, so the person investigating should allow for this. Types of physical evidence could include:

- emails
- paperwork
- receipts
- computer records
- phone records
- CCTV recordings
- Attendance records

When collecting evidence, it is important the person investigating follows the law. For example, be clear about the requirements in relation to data protection or employment contracts, and in respect of the employee's right to privacy. The investigator should also ensure they have permission where relevant to collect certain evidence for example, before conducting a search of an employee. In addition, the investigator should remember that they only have to conduct a reasonable investigation, only what is reasonable is likely to be important and relevant.

However, the MP as the employer has the right to access all email accounts for their employees. Should it be relevant for the MP to conduct an investigation, then they will need to contact Parliamentary Digital Services to instigate: Digital Service Support Desk can be contacted on 020 7219 **2001**.

Witnesses

Witness statements are often an essential part of the information collated during an investigation, particularly in cases of misconduct and employee grievances. Where individuals may be able to provide information relevant to the investigation, the investigator may interview them and/ or ask them to provide a witness statement. This should be done as near to the alleged incident as possible to ensure accuracy.

All witnesses who are interviewed should be interviewed in a private setting to establish what they know, and we recommend they are given the right to be accompanied to the meeting. In any event, it is good practice to allow any witness being interviewed to right to bring a work colleague or trade union rep. Witnesses should be advised at the start of the interview that they will be required to sign their witness statement, or signify agreement to notes, and that their statement may be shared with others, if the matter progresses i.e., to a disciplinary hearing. This will insure you comply with data protection laws and avoid statements being given by witnesses only

to subsequently discover that the individual is not prepared to sign their statement and wishes to remain anonymous.

In some cases, a witness may refuse to be interviewed. If this occurs, you should try to reassure the witness about the process and address any concerns that they may have. It is important that you do not pressurise or intimidate the witness; instead, you could explain the relevance of the witness's information to clarifying the matter at hand. The investigator could also offer alternative approaches such as the meeting notes being reviewed by the witness afterwards or asking the witness for a statement in writing.

Compiling a list of questions for each witness interview will give structure to the interview and is essential in ensuring that the investigator covers all areas of interest. Giving careful thought as to how best to pose questions will ensure the interviewee is clear about what is being asked. It will also allow the investigator to control the direction and length of the interview.

Witness anonymity

An investigator may be faced with a witness who might have some facts about the alleged incident/ complaint but does not want to get involved, and requests that their witness statement be anonymised.

At the start of the interview, the witness should be advised that you will be taking notes and that the notes of the meeting will become the witness statement, and that they will need to sign a copy of their statement. In some situations, the witness may think they would be updated on the outcome of an investigation. Instead, they should be made aware that any action taken is confidential, and that their statement may be shared as part of the process, where necessary. This should help manage expectations and avoid difficulties with witnesses refusing to sign their statement.

If a witness asks for their statement to be anonymised, the investigator should first explore their reasons for requesting anonymity. Where appropriate, the witness should be reassured that there will be no repercussion for them if they are truthful and reminded that there is an expectation, they will tell the investigator what they know about the alleged incident.

One way of alleviating such fears is to create a working environment where employees feel they can approach their line manager if concerns regarding bullying and harassment arise, and they will be dealt with promptly. In addition, encouraging both new and existing employees to attend training on the [Behaviour Code and why it matters](#), and having an anti-harassment and bullying policy within the office. This helps to encourage employees to report any inappropriate behaviour that they may witness or are subject to and help them be prepared to sign a statement. It is important to be clear that anyone who comes forward and helps the Member to deal with bullying behaviour will be protected from reprisals at work.

Nevertheless, there may be good reason for the investigator to accept the witness's need to remain anonymous. Where this is the case, the statement should be redacted/ anonymised after being signed by the witness. Where the witness could still be identified by the content of the statement (even after removing their name) the evidence discovered could be presented in list form.

Please contact the [Members HR Advice Team](#) if a witness does not want to take part in the investigation or is requesting to stay anonymous.

Witness statements for non-employees

Where evidence is required from a third party who is not an employee, the individual may not want to attend a meeting to provide a witness statement. One option is for you to take a statement over the phone, and then send it to the witness by post for them to check, sign and date. You could also email the witness and they respond by email to confirm the details you have sent them or suggest amendments. Another option is for the witness to provide a written witness statement, in which case it is advisable for you to provide a list of questions and issues for the witness to address and provide answers too.

Please contact the [Members HR Advice Team](#) if you are unsure how to collect a witness statement from a third party.

Refusing to disclose evidence

In some cases, an employee may refuse to disclose evidence, for example documents, letters, or emails. You should not compel employees to disclose personal documents, nor should an employer read private emails or diary entries. However, any work files (whether on paper or held on the organisation's computer systems) or work-related emails and letters belong to the Member, as the employer. Consequently, you can request that they are disclosed, and state that the employee could face disciplinary action for refusing to follow a reasonable request and retaining company property.

If the employee refusing to disclose evidence is at the centre of the investigation, you should point out in writing that a refusal to cooperate will limit the depth of the investigation, that you will have to take a decision on how to proceed on the evidence available, and that the employee's failure to assist with the investigation could be viewed negatively when determining the outcome.

Health and wellbeing

An investigation can be stressful for everyone involved. Sometimes it can lead to significant distress, and negatively impact the mental health of an employee. Where concerns about the mental health of an employee are raised, an investigator should treat the issue seriously and consider whether the process can be adjusted in some way.

For example, allowing the employee to be accompanied to any investigation meetings by a support worker.

Sometimes it might be appropriate to seek (with the agreement and involvement of the employee) professional medical help or guidance as to how the investigation can proceed fairly in recognition of the impact the process may have on the employee's mental health. To ensure the employee is able to receive help, the Member or Office Manager should highlight where they can seek further support. This might include:

- The Employee Assistance Programme
- Local GP or doctor
- Occupational Health Services

The Member or Office Manager should also liaise with the employee to ensure there are regular catchups to check on how the employee is doing and provide further support where necessary.

If you have concerns regarding an employee's health and wellbeing during an investigation process, please contact the [Members HR Advice Team](#).

Stage 3: Investigation meeting

The investigation meeting is an opportunity for the Member or Office Manager to interview someone who is involved in, or has information on, the matter under investigation. An investigation meeting should not turn into a disciplinary meeting. If disciplinary action may be necessary, a separate meeting must be arranged.

Right to be accompanied

Workers have a statutory right to be accompanied at a disciplinary or grievance hearing by either a work colleague or trade union representative. ACAS does not state workers have the right to be accompanied at investigation meetings. An employer may allow an employee to be accompanied at an investigation meeting under their own policies and procedures or under the Equality Act 2010 as a reasonable adjustment.

We would highly recommend you allow an employee to be accompanied by either a trade union rep or work colleague at an investigation meeting. Having a companion present can make the interviewee feel more comfortable and more willing to talk about the matter, and a companion may also be able to help an investigator manage the process more effectively by explaining steps being taken to an interviewee.

Out of courtesy, it is good practice to give the employee 48 hours' written notice and it is desirable to have a set of notes taken during the meeting – the gist, not verbatim. The investigator would also need to decide whether the meeting is going to be conducted in-person or virtually. It is important to ensure the investigation meeting is restricted to gathering facts and finding out what happened.

A record of the investigation meeting

The Member or Office Manager should plan how the meeting will be recorded. It is helpful to have a note-taker in the meeting, this allows you to focus on exactly what the interviewee is saying. Additionally, those being interviewed may make throw away comments during an interview about important issues which may be missed unless the investigator is actively listening.

The notes taken at the meeting will usually become an interviewee's witness statement. The notes should therefore record:

- the date and place of the interview
- names of all people present
- an accurate record of the interview
- any refusal to answer a question
- the start and finish times, and details of any adjournments
- written without gaps, to avoid the accusation that gaps have been filled in after the meeting.

A notes template can be found in **Appendix 2**.

The notes taken do not need to record every word that is said but they should accurately capture the key points of any discussion. A copy of the notes should be sent to the person as soon as possible after the meeting for them to sign and confirm they are happy with the record of conversation.

It is not best practice to allow a tape or audio recording of a meeting. Recording a meeting in this way can make people react unnaturally or feel ill at ease and can easily become a distraction to the purpose of the meeting itself. In addition, a copy should be available to all parties which can be cumbersome. You will also have the job of turning the recording into a transcript, for the record, which is onerous and often does not read well or even make sense. We recommend at the start of the meeting the investigator asks all present to confirm they are not recording and confirmation is captured in the notes; this is included in the meeting agenda Members HR provide.

Investigation meeting techniques

The Member or Office Manager should take time to prepare before the investigation meeting to help them feel more comfortable. This could include practicing interviewing techniques and writing a list of questions to ask the interviewees. Following interviewing techniques will help supplement and refresh a person's knowledge, skills, and approach. Further information on questioning techniques and active listening can be found in [ACAS's Conducting Investigations Additional Information Guide](#).

The Member or Office Manager should ask questions that challenge and test the credibility of the information being given in a manner that is professional and does not

intimidate an employee. It is tempting to say all you know about the issue in your questions, leaving the person being interviewed to say ‘yes’ or ‘no’. This is unlikely to allow you to get a full picture from a witness or to add anything to what you already know. There are times a closed question is important, but adding to the points you may have knowledge about is usually achieved through open questions. Both types of questioning are detailed below.

There are a number of different types of questions that may be used during an investigation meeting to help control the meeting and gather the full facts of the matter from the interviewee. For example:

Questioning techniques	
<p>Open questions:</p> <p>Encourage an interviewee to open up. They can provide a source of information that an investigation can then go on to explore in more detail.</p>	<p>For example:</p> <ul style="list-style-type: none"> • Explain to me exactly what you saw... • Describe exactly what happened... • Talk me through what you heard...
<p>Closed/ specific questions:</p> <p>Usually gives a Yes, No or definite answer. They can be helpful to gather specific facts and can help focus an overly talkative interviewee.</p>	<p>For example:</p> <ul style="list-style-type: none"> • What time did you leave your workplace? • How many times did that happen? • Did you speak to your manager about that? • Who else was there?
<p>Probing questions:</p> <p>Can test the strength of an interviewee’s account and challenge any inconsistencies. However, it is important to phrase these questions, so they are inquisitive rather than interrogative.</p>	<p>For example:</p> <ul style="list-style-type: none"> • When you say she was aggressive what exactly do you mean by aggressive? • You mentioned earlier that X... tell me more about that.
<p>Feeling questions:</p> <p>Can help to focus an interviewee on what is important to them and reveal their beliefs. However, they should be used sparingly as the meeting is mainly to establish the facts of the matter.</p>	<p>For example:</p> <ul style="list-style-type: none"> • What was important to you about that? • What is your main concern about what happened?

<p>Asking “what else?”:</p> <p>Helps an investigator to probe deeper beyond the initial information provided. However, care needs to be taken to ask this sensitively.</p>	<p>For example:</p> <ul style="list-style-type: none"> • What else can you tell me about what happened? • What else do I need to know about the matter?
<p>Summaries:</p> <p>Provide an opportunity to check that the correct information is recorded. They also allow the interviewee to reflect on what they have said, to correct any inaccuracies and to give further details where there are gaps.</p>	<p>For example:</p> <ul style="list-style-type: none"> • So can I clarify that what you are telling me is that you left your workplace at 10am because there was a problem at home, and you did not return to work. Have I got that right?

The [Challenging Conversation](#) guide can also help prepare an investigator, as it includes a table on how to structure and approach this kind of discussion.

Failure to attend an investigation meeting

If an employee refuses or fails to attend an investigation meeting, the Member or Office Manager should try to find out why and see if there is a way to resolve the issue. It could be the employee is not able to attend for a legitimate reason, such as illness, their representative cannot make the meeting date, or the person simply did not receive the invite. In this case, the Member or Office Manager should rearrange the meeting or ask the employee to produce a witness statement instead.

Where a legitimate reason has been given or the employee refuses or fails to attend the re-scheduled meeting, the Member or Office Manager should remind the employee that failure to attend a meeting may be viewed as refusing to follow a reasonable management request and could result in disciplinary action.

Sickness absence

If a witness is absent

If an employee you need to interview is on sick leave, you should speak to the Members’ HR team who will help you determine whether the witness:

- Is likely to return within a reasonable time frame; or
- Can be approached for interview notwithstanding their absence.

If the witness cannot be approached and their absence is likely to be ongoing for some time, it is normally better to continue with the investigation and mention their absence

when writing your investigation report. You can assess the extent to which their evidence may have made a difference to your conclusions.

If the accused employee is absent

If the employee who is the subject of the allegations is absent, that is a more difficult situation, but the overall approach should be the same.

If an investigatory meeting cannot be held, rather than delay matters indefinitely, you should carry out as thorough an investigation as possible in the employee's absence. In some circumstances you might need to consider a referral to occupational health to ascertain whether the employee is fit to part take in the investigation process.

It may be appropriate to write to the employee seeking input and inviting them or their representatives to make representations or present evidence that may assist you. However, we would recommend you speak to Member HR first before approaching the employee directly.

If your investigation has been completed without input from the employee, this should be clearly noted. Where the evidence indicates that there is a clear case to answer, the fact that the employee has not been interviewed should not prevent you from reaching that conclusion.

It will be a matter for any disciplinary hearing to ensure that the employee's version of events is heard and direct, if necessary, that investigation be undertaken.

Step 4: Gathering Evidence

Once the evidence has been gathered, it should be arranged into a logical order to be assessed. It is generally best to arrange documents in chronological order. The documents can be attached as an appendix to the investigation report, along with the finalised notes of the interviews with witnesses.

In many cases, it is helpful to work out a detailed timeline of events and cross reference this with particular documents or passages from witness interviews. Setting out timeline will help to see how events unfolded and also identify any gaps there may be in the evidence. You may well have spoken to several people who saw the same event. You should compare their accounts to see to what extent they support each other and whether there are any inconsistencies or contradictions.

It is important to bear in mind that memory can be flawed, and two accounts of the same incident will never match exactly. If they do, that might suggest there has been some collusion between the witnesses. While individual's details may differ, you would expect the broad thrust of what witnesses say to match. If they do not, that is likely to cause serious doubt on what happened.

You should also, where appropriate, match a witness’s account against any documents that you have obtained. It may be that an email or written record of meetings or processes supports or contradicts a detail in evidence given by a witness. A careful cross-referencing between the witness accounts and available documents often sheds a great deal of light on what happened.

In some cases, you will have two different versions of event that cannot be reconciled and where the conflict cannot be resolved by looking at the document. Where this happens. You should note the conflict and leave it to be resolved, if necessary, by a disciplinary hearing.

The fact that an allegation boils down to “one person’s word against another’s” is not in itself a ground for finding that there is no case to answer at a disciplinary hearing.

Types of evidence	
Written records and documents	Physical evidence
<p>All documentation that may be useful to establish the facts of the matter, such as attendance sheets/ records or paper copies of electronic material, should be collected. These types of documentation can help an investigator corroborate or contradict other evidence collected and can highlight areas that an investigator needs to explore further at an investigation meeting.</p>	<p>There could be physical evidence, such as CCTV or computer and phone records relevant to the investigation, which can be obtained lawfully and without breaching the employee’s employment contract.</p> <p>If physical evidence is collected, an investigator should document what it is, how it was collected and what it reveals. This can make it easier for an investigator to refer to the evidence at the conclusion of the investigation. Any physical evidence gathered should also be retained in case it needs to be viewed again at a later date. Some physical evidence that could be collected may be difficult or expensive to collect. An investigator should seriously consider how any relevant evidence could be collected and then decide whether the associated costs mean it would be reasonable to collect or not.</p>

Searching an employee

A search should only be conducted in exceptional circumstances where there is a clear, legitimate justification to search an employee or their possessions. Even where an

employee's contract allows an employer to conduct a search, you will usually need an employee's consent for it to be lawful. The Ipsa contracts are silent about searching.

Where a Member or Office Manager needs to search a desk or cupboard that an employee uses, the employee should be invited to be present. Where they are unable to be present, a manager should be present to witness the search.

If an employee refuses to be searched, it might amount to unreasonable behaviour and/or jeopardise evidence that could potentially be used to exonerate them.

However, an employee may have a legitimate reason to refuse, and the Member or Office Manager should be sensitive to other factor that may explain a refusal. You should therefore explore why an employee has refused to be searched, consider any adjustments that may need to be considered, and seek to resolve this rather than assume that refusal implies guilt.

Where it is believed that a criminal offence may have been committed, the Member or Office Manager may call the police as they have wider powers to search individuals. All requests and refusals should be recorded.

Stage 5: Reporting the investigation findings

Once the Member or Office Manager believes they have established the facts as far as is reasonably possible and appropriate, they will need to produce a report that explains their findings. While a written report is not always necessary, many investigations will benefit if its findings are recorded in writing.

An investigation report should cover all the facts that were and were not established, and whether there were any mitigating circumstances that also require consideration. To exclude any information may leave an investigation open to accusations of bias and filtering evidence to suit their findings.

The report should reflect the Member or Office Managers own conclusions. While they may seek advice from a third party such as Members' HR Advice, the conclusion should be their own.

When the Member or Office manager are reporting on the findings of their investigation, they should consider any mitigating factors that were raised during the investigation meetings, and these should be included in the report.

Mitigating factors could be any background circumstances that might explain the conduct or reduce the severity of the penalty for the employee. Mitigating factors could include anything, depending on the circumstance of the individual. For example, ill health, personal difficulties, previous behaviour, or length of service. Although, mitigating factors can explain a situation it does not necessarily excuse what has happened.

When a Member is deciding whether to terminate employment, all the employee's circumstances need to be taken into account to arrive at a "reasonable" decision. This means it is especially important to ask an employee during the investigation stage whether there are any matters that they would like to be taken into account.

In some circumstances, an employee may provide context or a defence as to why a situation has happened. For example, provocation, self-defence, or business contribution. In some cases, this could explain and excuse the actions of the employee and any penalties being considered may be dropped on this basis.

If you are undertaking an investigation, please contact the [Members' HR Advice Team](#) who can provide you an investigation report template to support you with the process.

Keynote! – Tips for writing a report

When writing an investigation report the Member or Office Manager should remember who will read the report once it has been completed and that this will often include an employee who raised the grievance or an employee under investigation. Therefore, the report should:

- Be written in an objective style
- Avoid nicknames or jargon
- Use same form of address for all people references
- Use appropriate language and keep simple wherever possible
- Stick to the facts of the matter
- Keep it concise
- Explain any acronyms used
- Include all evidence that was collected.

Request to make a recommendation

It is common for the person undertaking the investigation to make recommendations on whether any further action may be necessary or beneficial. If the Office Manager/ HR proxy has undertaken the investigation, they would make a recommendation on next steps or an outcome, depending on what stage of the process they have reached. This could include formal action, informal action, or no further action.

Formal action may consist of initiating a disciplinary hearing, changing the office policy and procedure, or further investigating into other matters uncovered. Informal action could include training or coaching, counselling support or mediation for parties involved. In addition, notification that further similar action may result in disciplinary action.

Although no further action may be necessary, it may be recommended that another form of support would be beneficial to parties involved and the business. It is also best practice to inform all parties involved no action is being taken and notes from formal investigation meetings are being destroyed.

Stage 6: After the investigation is completed

Once the Member or Office Manager has completed their investigation next steps would be considered by the Member, as the employer. This could include:

- **Discussing the report in person:** the Office Manager/ HR Proxy will need to discuss their findings with the Member. The focus of discussion should be to decide whether any further steps are necessary. It is important that the Office Manager/ HR proxy take a steer from the Member (as the employer), as it will be the Member's decision whether they want to take further action.
- **Attending the disciplinary hearing:** the Office Manager/ HR Proxy may be required to attend a subsequent hearing. This will often happen in a Member's office as the person undertaking the investigation will usually be the same person conducting the disciplinary hearing, due to the size/ structure of the office.
- **Input into policy or procedure review:** while the Member or Office Manager/ HR Proxy is undertaking the investigation they may notice policies and procedures need updating, amending, or implementing. This should be noted and reported in a separate document for consideration.

The Member, as the employer would be the decision maker (not the Office Manager/ HR proxy) who makes the final decision as to whether a disciplinary hearing will be held, and an outcome given.

Further clarification at the formal hearing

On some occasions an issue may be raised during a formal hearing which may not appear to have been considered during the investigation. The hearing may therefore need to be adjourned while the Member or Office Manager chairing the hearing discusses and clarifies the matter, or the issue can be noted and investigated after the hearing meeting, before the final outcome decision is made.

Only in exceptional circumstances will there be a need to reinvestigate the whole matter. However, the Member may ask the Office Manager/ HR Proxy to investigate any new issues put forward or investigate it further themselves.

Approaching the matter in this way means that a deficiency in an investigation may be rectified or a new argument can be fully considered before the hearing is reconvened and a final decision is made.

Keeping investigation reports

There will usually be a need to retain investigation reports for a period of six years after any employee involved in the case leaves the employment of the MP. Where the report includes details about individuals, (including witnesses) it is important to keep the report securely stored and restrict access only to those individuals who need it and to be aware of data protection or other legal requirements.

If an individual wishes to see a report they believe they have been named in, they have a right to see any parts of the report that contains information about them, or that is reliant on information that they have provided. However, they should not be allowed to see private information belonging to other individuals.

The report should be securely disposed of once it becomes irrelevant or out of date. For information on data protection, Members and Office Manager can refer to the [ICO \(information Commissioner's Office\)](#) website or contact the [Information Compliance Service](#).



Appendices

Appendix 1: Investigation Plan Example

The below is an example investigation plan. To help prepare for your own investigation, please find investigation plan template in [SharePoint](#).

Investigator	John Smith
Terms of reference	<ul style="list-style-type: none"> To investigate a grievance raised by Andrew A that Emma B has been harassing him in person and by email.
Provisional time-frame	<ul style="list-style-type: none"> Started on 16 August 2023 Report to be completed by 4 September 2023
Policies and procedures to review and follow	<ul style="list-style-type: none"> Anti-bullying policy Grievance policy <p>Or, if you don't have a policy</p> <ul style="list-style-type: none"> ACAS Code of Practice on disciplinary and grievance procedures
Issues that need to be explored/clarified	<ul style="list-style-type: none"> What action does Andrew consider to amount to bullying and why? What are Emma's responses to the allegations?
Sources of evidence to be collected	<ul style="list-style-type: none"> Are there any witnesses to the matter? Witness statements CCTV All emails sent between the two which the business can still access.
Persons to be interviewed (including planned order of interviews)	<ul style="list-style-type: none"> Andrew A 21 August 9am Emma B 21 August 2pm Further names may be added following initial interviews
Investigation meetings further arrangements (When/where/notes to be taken by)	<ul style="list-style-type: none"> Meeting room 3 booked 21 August HR and a note taker to be present Meeting room 3 provisionally booked for the 24, 25 August also
Persons to supply own statement	<ul style="list-style-type: none"> Parliamentary Digital Services to provide evidence on email interaction between Andrew and Emma
Investigation meetings to be completed by	<ul style="list-style-type: none"> 29 August 2023

Appendix 3: Investigation report

The following template is an investigation report that can be adapted by an investigator to suit circumstances in their investigation. The report template can be found in [SharePoint](#).

Introduction	Investigation authorised by: [MP Names]
	Investigator: [Name and role]
	Date investigation began:
	Terms of reference: [include if they were amended and how]
	Background to the investigation: [Brief overview of the matter]
Process of investigation	The investigation process: [Explain how the investigation was authorised]

	Evidence collected: [List all evidence collected]
	Evidence not collected: [List all evidence that could not be collected and why]
	Persons interviewed: [List all people interviewed]
	Persons not interviewed: [List any witnesses that could not be interviewed and why]
	Anonymised statements: [If any, explain why and provide details of any enquiries into witness]

The investigation findings	Summary of written and physical evidence: [name and summarise each document contained, set out how the evidence supported or did not support your findings and why]
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	<p>Summary of witness evidence: [name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support your findings and why]</p>
	<p>Facts established: [detail what the investigation has established]</p>
	<p>Facts that could not be established: [detail any part of the investigation that was inconclusive]</p>
	<p>Mitigating factors: [detail if there were any mitigating factors uncovered that are relevant to the investigation]</p>
	<p>Other relevant information: [detail any other information that is relevant to the matter]</p>

<p>Conclusion [if required]</p>	<p>Recommendation:</p> <p>Formal action/Informal action/No action required</p>
	<p>Further details on recommendation: [such as the type of action suggested for example, formal disciplinary meeting, and if there are any other recommendations related to the matter. In disciplinary matters, the investigator should not recommend a possible sanction. This should only be considered at a disciplinary hearing]</p>
	<p>Investigator’s signature:</p>

	Date:
Supporting documents	[List all documents collected as part of investigation and included in report]

Appendix 4: Useful links and templates

LINKS	
ACAS guidance on Conducting Workplace Investigations	https://www.acas.org.uk/sites/default/files/2021-03/conducting-workplace-investigations.pdf
ACAS guidance on Conducting Investigations – Additional information	https://hopuk.sharepoint.com/:b:/r/sites/hct-mstinfo/advice/Members%27%20HR%20A-Z/C/Conducting%20Investigation/Conducting%20Investigations%20-%20Additional%20information.pdf?csf=1&web=1&e=3ZXybz
ACAS learning online – includes free e-learning on a wide range of topics including disciplinary, grievance and conflict resolution	https://www.acas.org.uk/online-training
Best Practice Guide on Managing Misconduct	https://intranet.parliament.uk/images/intranet/Employment/Best%20Practice%20Guide%20-%20Managing%20Misconduct_v1.pdf
Best Practice Guide on Grievances	https://intranet.parliament.uk/images/intranet/Employment/Best%20Practice%20Guide%20-%20Grievance%20v1.pdf

TEMPLATES
These can be found on the House of Commons Members A-Z of essential forms, factsheets and checklists web page.
Investigation plan
Template notes
Investigation report