
Capital

**Employment Law
MA/PGDip in Strategic
People Management**



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Law**

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Effective Investigations

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Claire Tait
Senior Associate
Capital Law Ltd

Aims

To equip managers with the necessary skills, knowledge, attitudes and behaviours required to:

- conduct effective investigations,
- analyse evidence and
- identify appropriate outcomes

Learning Objectives

- Identify the need for effective investigations
- Define the characteristics of an effective investigation
- Discuss relevant employment law issues when conducting investigations
- Outline the process for conducting investigations
- Challenge inappropriate behaviour in an interview setting
- Demonstrate effective investigative skills through listening and questioning
- Deliver a balanced report with clear recommendations
- Analyse information and generate appropriate and fair outcomes

Why carry out investigations?

- **Business reasons**
 - Why do we need to carry out investigations effectively?
 - Decide if there needs to be an investigation.
- **Potential impacts of ineffective investigations**

Why carry out investigations?

Must be:

- Prompt
- Thorough
- Impartial / conducted by someone not directly connected with the allegation (where possible)

Purpose?

- To establish facts

When to carry out an Investigation

Discipline

- Lying
- Theft
- Falsification of records
- Aggressive language or behaviour
- Refusal to work
- Casual/Unauthorised absence
- Health & Safety breaches
- Fraud

Grievance

- Bullying
- Victimisation
- Discrimination
- Sexual harassment
- Unequal pay
- Whistleblowing

Appeal

- Redundancy Selection

Who investigates

Appointing the Investigation Officer

Consider:

- *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 organisation and how it operates?*
- *What is their availability during the investigation's provisional time-frame?*
- *Are they trained or experienced in how to conduct investigations?*
- *How confident are they at communicating in writing and orally?*
- *What training or support may they require?*

Other Roles

Grievance Officer

- Independent
- Senior to the Investigation Officer

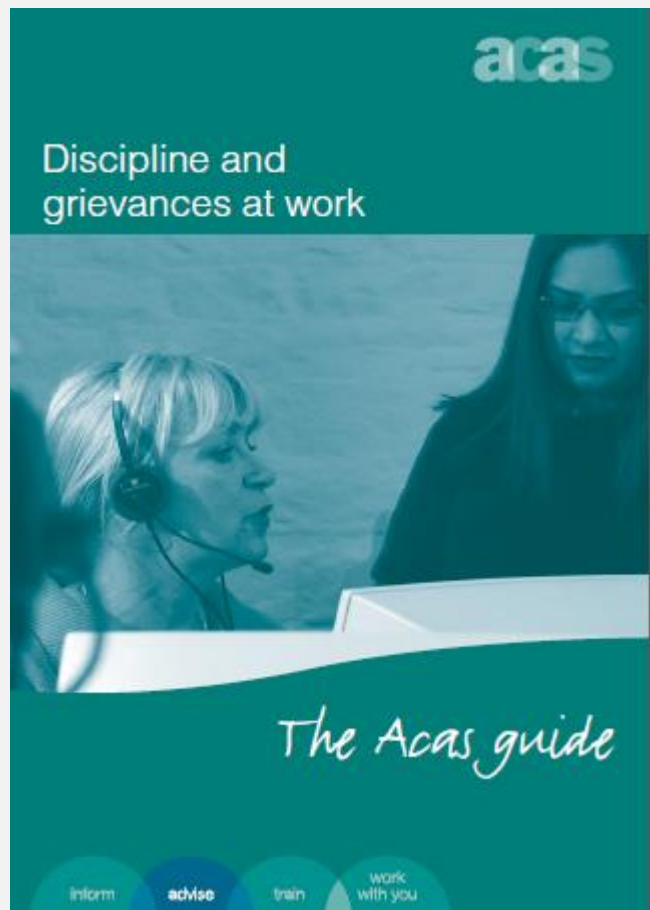
Disciplinary Officer

- Normally the individual's line manager or superior

Appeal Officer

- Independent of the business area
- Senior to the original decision-maker

ACAS Code of Conduct



“Employers should carry out any necessary investigations, to establish the facts of the case.” —ACAS 2009

Matters should be investigated:

- without unreasonable delay
- by holding an investigatory meeting as necessary
- to establish the facts
- to collate evidence.

Employers need to:

- act consistently and fairly
- allow employee to state their case before any decisions are made
- should have different people for investigation and hearing.

Suspension

- Precautionary suspension should be:
- immediate
- with pay
- brief
- kept under review
- not a sanction

Plan

The investigation plan should focus on:

- What facts need to be established
- What evidence needs to be collected
- How to complete the investigation within the timeframe
- Reviewing company policies and procedures
- Identifying parties relevant to the investigation
- Deciding on the order of events
- When and where the meeting will take place

Policies and Procedures

- Disciplinary Policy
- Grievance Policy
- Dignity at Work Policy
- Data Protection Policy
- Whistleblowing Policy
- Managing for Attendance Policy
- Improving Performance Procedure
- Redundancy Policy
- Bullying & Harassment Policy
- Smoking Policy
- Etc.

Invite to Investigation

Written invite to investigation interview should inform:

- Allegations under investigation
- Reserve right to amend allegations as investigation progresses
- Clarify matters that have been established to date
- Purpose of the investigation
- No decisions have been taken
- Time, date, location of meeting

Poor Listeners

- Think of what they are going to say rather than listen
- Don't hold eye contact—demonstrates lack of interest, fear or criticism
- Jump to conclusions without hearing the other person out / interrupt
- Listen to their own dialogue inside their head instead of what the other person is meaning
- Daydream or just "switch off".

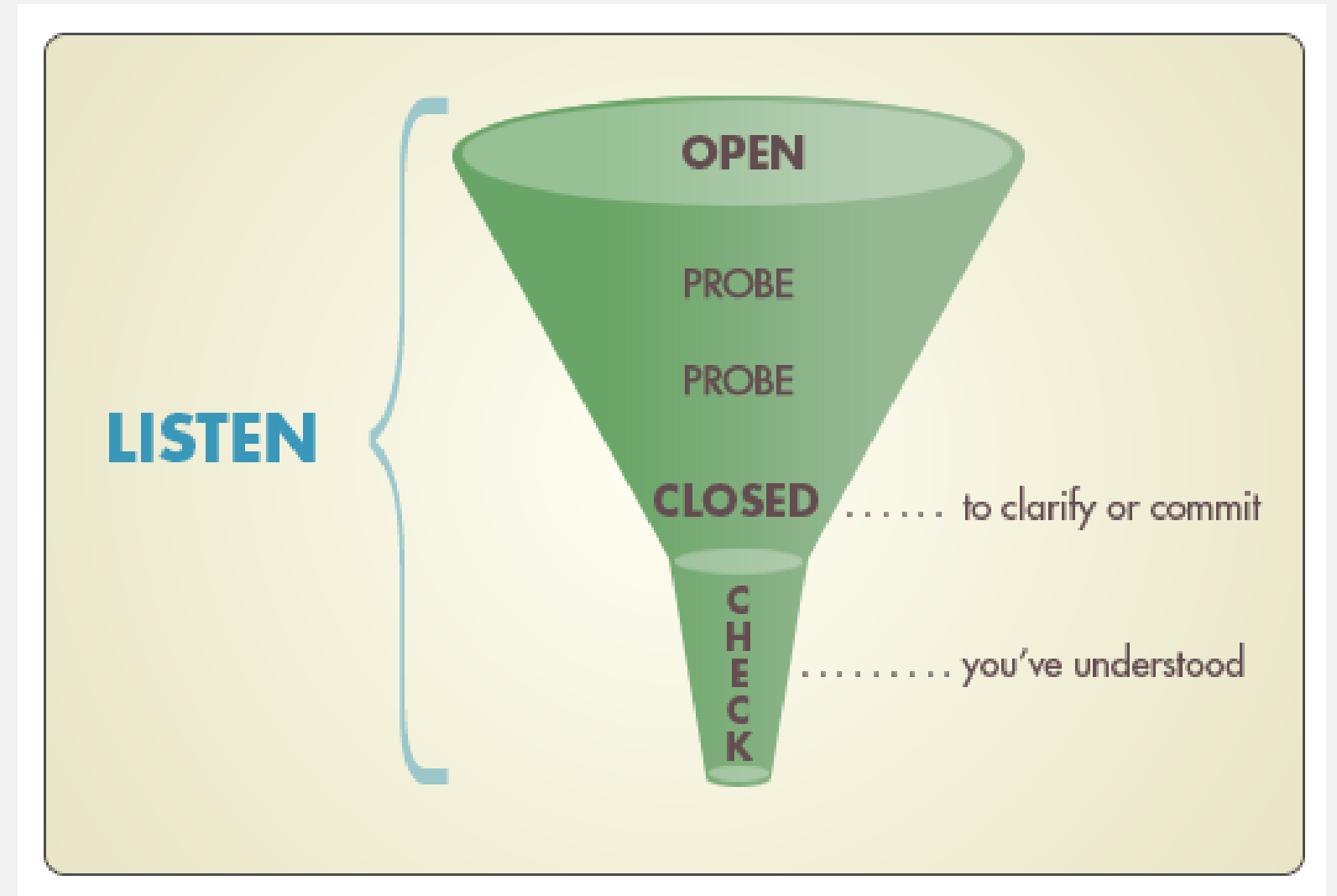
Good Listeners

- Look at the person they are listening to—making and maintaining eye contact
- Maintain natural demeanour
- Appear interested - nodding your head for example sends the silent message back to the talker that you have heard and understood.
- Take an active part in the conversation—reflect back the words or meaning. Ask questions to express interest
- Take account of body language.

Effective Questioning

Effective Questions	Questions to avoid
Open and probing	Hypothetical
Reflecting	Leading
Closed or direct	Closed or direct
Summarising	Multiple
Use Pauses and Silence	

Questioning Skills— Funnelling



Investigation Interviews

- Confirm from the outset that it may be relied upon
- Ensure you understand the interviewees points of view and identify what needs further enquiry
- Investigate anything further that is raised
- Stick to the point & avoid hearsay/gossip
 - What happened to YOU?
 - What did YOU witness?
- Take and agree an accurate record—summarise the key facts

Investigation Interviews

Must not:

- Offer an opinion
- Offer advice—except to assist with understanding evidence
- Argue
- Intimidate or bully

Should:

- Encourage—nod head, ‘yes’, ‘tell me more’, ‘go on’, ‘please continue’
- Verify—paraphrase, restate, summarise, ‘so what you are saying is....’
- Challenge

Fact versus Opinion

BASIS FOR COMPARISON	FACT	OPINION
Meaning	Fact refers to something that can be verified or proved to be true.	Opinion refers to a judgement or belief about something.
Based on	Observation or research.	Assumption or personal view.
What is it?	Objective reality	Subjective statement
Verification	Possible	Not possible
Represents	Something really happened	A perception about something
Change	Universal	Differs from person to person
Words	Shown with unbiased words.	Expressed with biased words.
Debatable	No	Yes
Influence	Facts has the power to influence others.	Opinion does not have the power to influence others.

Note-taking

Do

- Keep in step with the thinking of the meeting and clear up outstanding points before it is too late
- Discriminate between fact and opinion
- Record the words actually used don't substitute your own words or interpretations
- Write in note fashion - be concise and accurate and avoid verbatim reporting unless essential
- Use short clear sentences and paragraphs
- Write your notes boldly and neatly
- Check the finished product
- Complete and type the notes within two days of the meeting
- Ensure the individual has the opportunity to review and sign the notes

Note-taking

Don't

- Permit the pace of discussion to get too fast for accurate note taking
- Be judgemental and allow your own personal bias to creep into your interpretation
- Include unfamiliar abbreviations and jargon
- Delay typing up your notes
- Be over influenced by status or subject

And remember...

- The better your notes the easier your report will be to write
- Hand written notes can be required by an Employment Tribunal
- Think about what it will feel like to present and be cross examined under oath in an Employment Tribunal

Witness Statements

- Data Protection issues
- Inconsistencies when notes are reviewed
- Confidential statements / Anonymity

Other information

Forensic Information

- CCTV Footage
- Attendance Recording
- 3rd Party Statements
- Social media
- Metadata
- Financial reports

The Report

- Introduction and terms of reference
- Summary of the process / Methodology
- Parties involved
- Chronology
- Allegation
- Considerations & Inconsistencies
- Findings & Recommendations
- Appendices

The Report: Top Tips

Accuracy

- Say what you mean
- Be objective and stick to the facts
- Good punctuation
- Good spelling
- Using the active rather than passive to avoid ambiguity
- Be consistent in terminology

Brevity

- Short simple words
- Short sentences
- Short, numbered paragraphs - whenever the topic changes
- Keep an impersonal tone and don't assume an overly formal or legalistic writing style

Clarity

- Use Plain English
- Only use jargon in the right place
- Check that the flow of the writing is logical
- Start by making the topic and purpose clear
- Finish by making it clear what happens next
- Check for ambiguity from the reader's point of view
- Avoid waffle

Considerations and inconsistencies

Considerations

- Motivations
- Organisational circumstances
- Environment
- Historical practices
- Personal relationships

Inconsistencies

- Contradictory statements
- Missing paperwork

In Summary Quiz

1. Why do we need to carry out HR investigations effectively?
2. Can employees be suspended pending HR investigations?
3. What are the points to consider when appointing an Investigating Officer?
4. Should invitations to attend investigation meetings always be written? If so, what must they include?
5. How often can you interview witnesses during an investigation?
6. What 3 things should always be included in the investigation report?

**Thank you.
Any questions?**

