

A photograph of three business professionals (two men and one woman) sitting at a long table in a modern office or cafe at night. They are all looking at their laptops. The woman is on the left, wearing a grey blazer. The man in the middle is wearing a light blue sweater. The man on the right is wearing a dark red shirt and is gesturing with his hand while talking. There are coffee cups and a small potted plant on the table. The background shows a large window with a view of city lights at night. The overall mood is professional and collaborative.

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HR PowerHour

Top Tips for ensuring good outcomes from disciplinary and grievance investigations

4 November 2021

The Hour

- Preliminary issues and scope of the investigation
- The role of the investigator
- Conducting witness interviews
- Dealing with difficult issues
- Case study

The Preliminaries and Investigation Scope

Prepare & Plan

Why are investigations important?

- Risk of Claims
 - Unfair dismissal
 - Indirect discrimination
 - Failure to make reasonable adjustments
- ACAS Code of Practice & ACAS guide
- Save Management Time & Cost
- Protect your organisation's culture

Prepare & Plan

- Formal vs informal
- Suspension
- Investigations should be
 - “*Reasonable in all the circumstances*”
 - Fair, even handed and carried out without delay
- Who will investigate?
 - Internal or external

Top Tip:
Train your managers on how to carry out investigations; what will be the legal standards their investigation will be measured against.

The essentials of a good investigation

- Terms of Reference
 - Clarity for the investigator
 - Clarity for the Employee
 - Focus on issues
- Additional allegations
- Frame allegations widely
- Cases of “Obvious Guilt”
- Career ending allegations – Additional burden

Top Tip:
Consider framing
allegations widely. This
will allow them to be
narrowed in scope at the
disciplinary stage

The Investigator

Role and Responsibility

The Role of the Investigator

- Gather evidence
- Establish Facts
- Reach a conclusion on what did or did not happen
- Determine if there is a case to answer
- Not there to determine culpability

Top tip: Ensure that the investigator understands their role and remit from the outset

The Role of the Investigator

- Common Pitfalls
 - Cherry picking
 - Biased reports
 - Insufficiently detailed interviews
 - Recommending disciplinary sanctions

Investigatory Interviews

Conducting Interviews

- Inform the employee in advance
 - The reason for the meeting
 - The allegations against them
 - Provide relevant documentation
- Witness/Interviewee
 - Need to be informed that the process is confidential

Top Tip: Prepare a bundle of relevant documents. Paginate the bundle - this will be available to the interviewees.

Top Tip: Inform witnesses in advance of the meeting that their evidence will form part of any grievance/disciplinary process

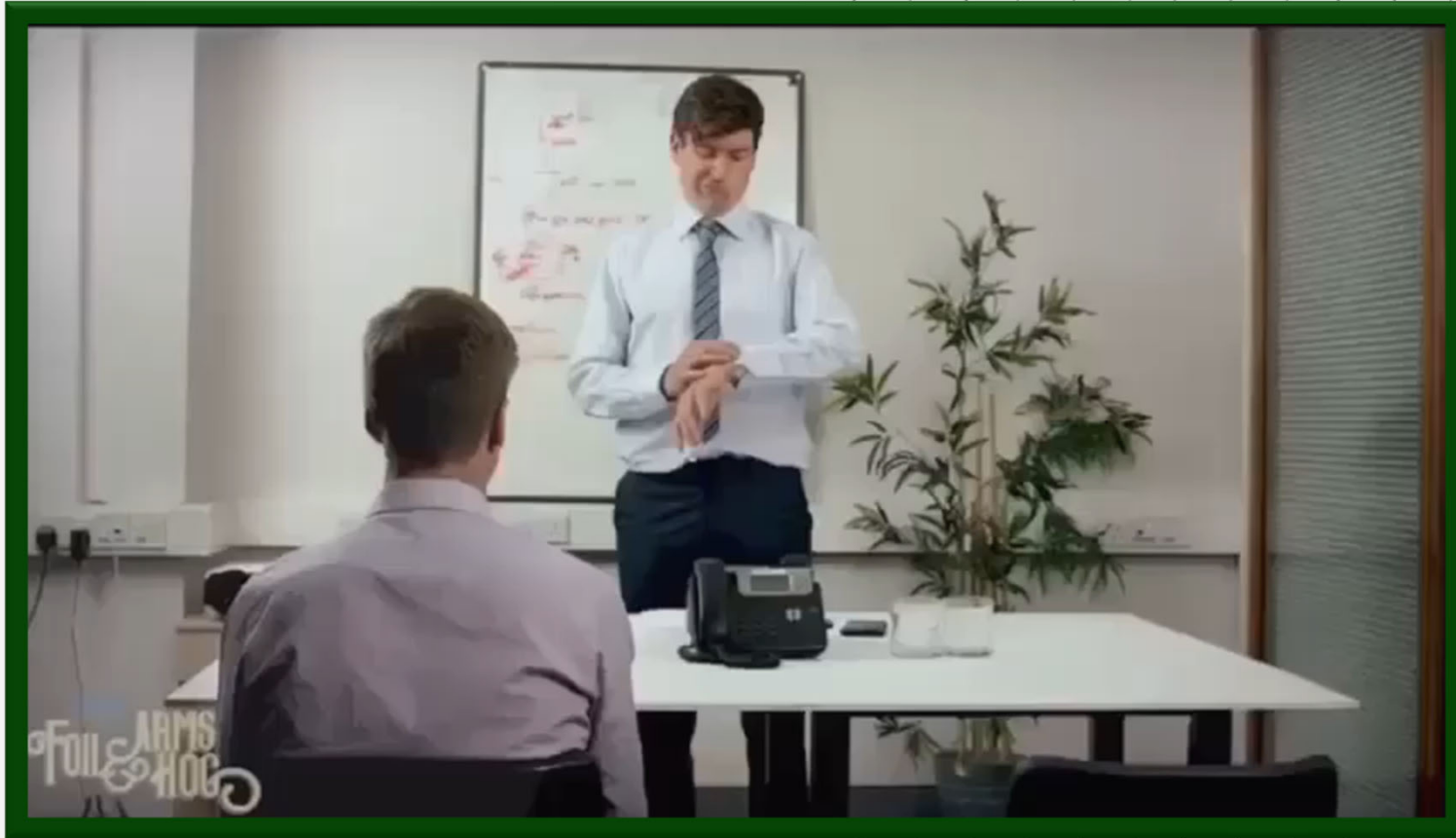
Conducting Interviews

- Practical considerations
- HR support and Note takers
 - Disputed notes
- The Right to be accompanied
- Reasonable adjustments

Top Tip: Have a notetaker present or alternatively record and transcribe the meeting

Top Tip: Prepare the notetaker in advance, ensure they know what the allegations are and who is involved so that they can take an accurate note

Remote Interviews



Remote Interviews –The Issues

- Cameras off
- Muted microphones
- Others present
- Disruptions and interruptions
- Covert recording

Top Tip: Confirm at the outset that the meeting is being recorded and will be transcribed and that this will be the agreed record of the meeting. No other recordings should be made

Tricky issues

Reluctant Witnesses

- Duty of good faith and fidelity
- Anonymity
- Reliance on anonymous witness evidence
 - *Linfood Cash & Carry Ltd v Thompson [1989]*
 - *In writing*
 - *Dates, times and places;*
 - *Context of evidence*
 - *Motives*
 - *Character*
 - *Redaction*

Top Tip: assurances in relation to confidentiality and anonymity can be very difficult to adhere to in practice and may render the investigation unfair

Grievance raised during investigation

- Common for grievance to be submitted after an investigation is commenced
- Consider the grievance issues raised:
 - Temporarily suspend the investigation
 - Conflict of interest
 - Bias
 - Discrimination
 - Undertake concurrent grievance procedure

Conflicting evidence

- Seek corroborating evidence
 - Other witnesses
 - Documentary or other evidence
- Investigator may have to determine whose evidence they prefer
 - Document and justify
- Inconclusive determination

Case Study

Case Study

- You are the Head of HR for a delivery company.
- Complaints from Customers regarding late deliveries.
- Initial investigation and complaint logs show 85% of the time the issue arises when Tom Tardy and Pete Punctual are the delivery Team.

Case Study

- During the investigation
 - Pete tells you Tom is to blame because he's always stopping to chat to other delivery drivers
 - Tom tells you Pete is to blame for the late deliveries because he takes too many breaks
- Pete tells you he's terrified of Tom, who has a temper, and doesn't want him to know that he's given evidence against him and wants it to be anonymous

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Thank You

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