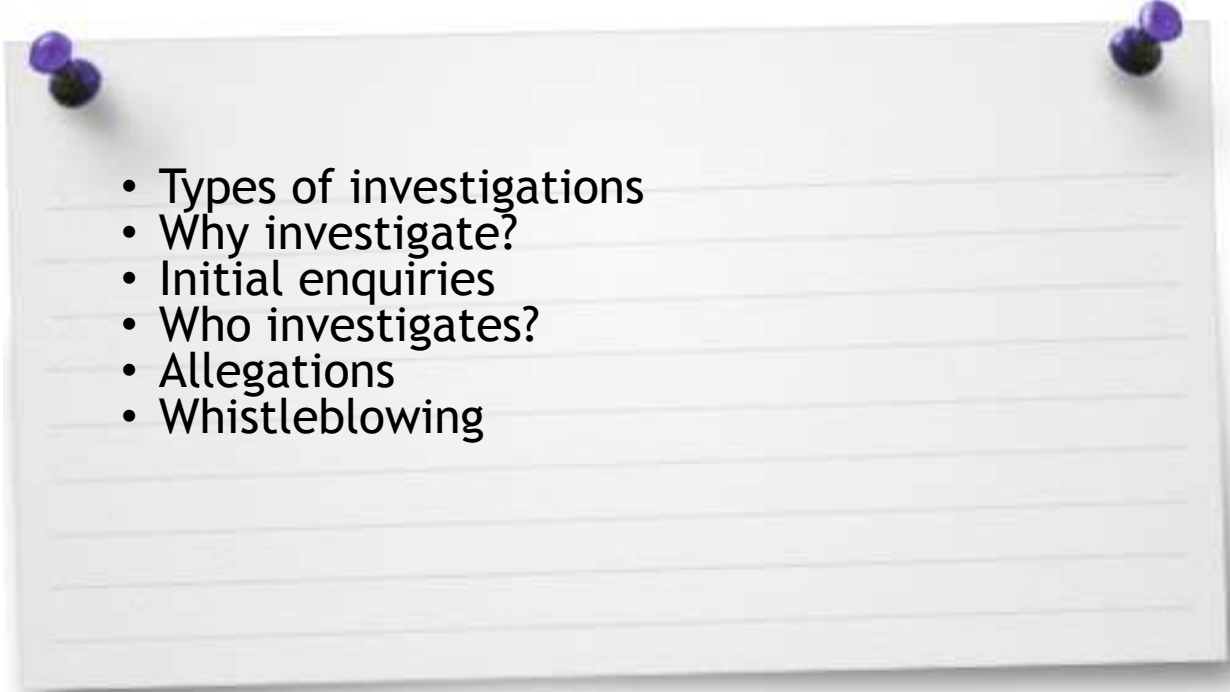


Investigations - Why, When & How

Alex Berkshire (Associate) & Daniella Glynn (HR Consultant)

12th May 2020

What we will cover today

- 
- Types of investigations
 - Why investigate?
 - Initial enquiries
 - Who investigates?
 - Allegations
 - Whistleblowing

Poll

Who in our audience has had the joyous task of having to undertake some form of investigation?

Types of Investigations

Different types of investigation

- Disciplinary
- Performance Management (capability)
- Sickness Absence
- Grievances/Dignity at work
- Whistleblowing

Why Investigate?

- Establish the facts of the case and to help make an appropriate decision about what to do next
- Show that you have acted reasonably, fairly, objectively and in a proportionate manner
- Be able to defend a case at Employment Tribunal
 - an investigation is an important part of the ACAS Code of Practice on disciplinary and grievance procedures
 - for a dismissal on the grounds of misconduct to be fair, it must follow a reasonable investigation
- A fair investigation is vital to demonstrate fair action has been taken eg a fair dismissal on the grounds of misconduct

Initial enquiries

- Can an allegation be resolved without recourse to a formal investigation?
 - a search of the school establishes that an item of property has not gone missing after all
 - the pupils who you were told were witnesses to an event all say the alleged behaviour did not happen
 - an IT audit establishes that inappropriate access of information from a confidential school salaries spreadsheet took place when the accused employee was on leave (so no access)
- In such circumstances the employee could be exonerated without ever being subject to a formal investigation

Who investigates?

- Appropriate person to investigate
- In most cases it will be the line manager of the employee who is the subject of the complaint
- Different people should carry out the investigation and hearing



Considerations

What if the manager is a witness?

Relationships moving forward

Impartial and unconnected

Complex and / or involving senior personnel

Skills & Experience

- Must be able to manage witnesses and those being investigated
- Experience to look into complex layers of information
- Be able to present information robustly & coherently at hearing, appeal and even tribunal
- Be able to manage challenge from TU, legal reps, etc
- Have appropriate HR / legal support

Role of the investigator

- Objective and impartial - no prior involvement (if possible)
- Give investigation priority
- Keep Principal up to date, if appropriate
- Conduct investigation within agreed timescales
- Organise and conduct investigation meetings
- Ensure all information and documentation kept secure
- Prepare report and present to disciplinary hearing panel

Allegations

- Keep allegations simple
- Confirm separately if allegations are in breach of specific policy or standard, (i.e. teachers standards)
- Remember - the panel have to come to a decision based on all of the elements within the allegation so be careful not to overload

Poll

Which allegation would you use in this case?

Allegations and Breaches

If proven such conduct is stated as an act of gross misconduct in the disciplinary policy as follows:

- ***Theft, or unauthorised removal of property or the property of a colleague, contractor, pupil or member of the public;***
- ***Fraud, forgery or other dishonesty***

If proven this conduct is a breach of our of our Code of Conduct which states

- ***Staff must ensure that they always act with honesty and integrity***

Allegations and Breaches cont

If proven the conduct is in breach of the Teachers Standards which state:

- *Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school*
- *Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach*

Whistleblowing

Need to be alive to whistleblowing when allegations are made

Assess whether whistleblowing or not

Investigate under the correct policy

Remember additional protections for whistle blowers

?????



Latest Advice & Guidance

www.education-advisors.com



Contact Us

Please note

The information contained in these notes is based on the position at May 2020. It does, of course, only represent a summary of the subject matter covered and is not intended to be a substitute for detailed advice. If you would like to discuss any of the matters covered in further detail, our team would be happy to do so.

© Browne Jacobson LLP 2020. Browne Jacobson LLP is a limited liability partnership.



Alex Berkshire | 0121 237 3909 | alex.berkshire@brownejacobson.com



Daniella Glynn | 0330 045 2788 | daniella.glynn@brownejacobson.com