

10 KEY STEPS FOR CARRYING OUT A HARASSMENT OR BULLYING INVESTIGATION IN THE UK



The laws on harassment and bullying apply to all UK employers, irrespective of the number of employees.

Investigations in the UK follow a similar process to the US in terms of

- Review of the initial complaint to ensure it meets the legal definition of harassment.
- Ensuring impartiality in the choice of investigation leader and interviewer.
- Separating the complainant and alleged perpetrator during the investigation.

However, investigations in the UK and most other countries are generally carried out by managers internally, rather than an externally sourced solicitor, lawyer or attorney.

This report contains a summary of a typical investigation process in a small employer.

1. Appointment of investigation leader and interviewer

The business owner or a senior manager appoints an investigation leader.

If you are the investigation leader, you will appoint another manager as the interviewer. You may consult with the owner or senior manager to identify the most suitable person.

The interviewer carries out interviews with all parties involved in the complaint.

2. Notice of an investigation

The investigation leader provides the complainant and alleged perpetrator of the harassment with written notice of the investigation. This should include expectations of confidentiality and policies on victimization during the process.

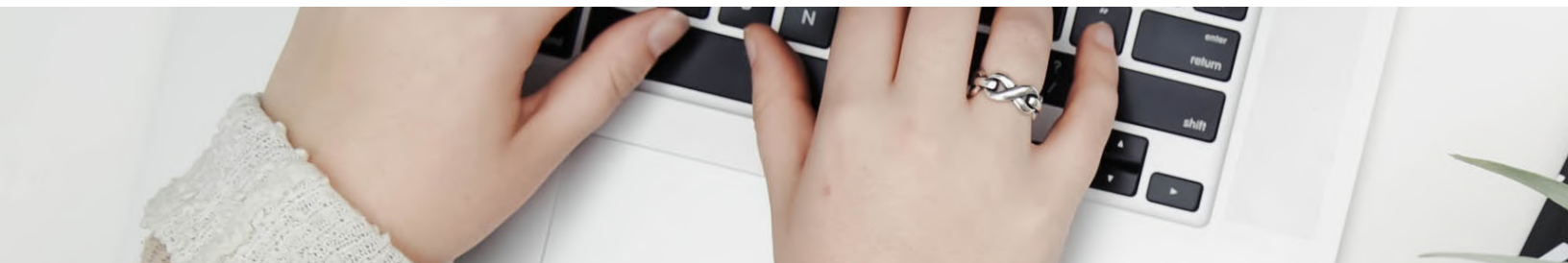
The investigation leader sets up the schedule of interviews and advises both parties of the name of the interviewer.

3. Speak to the complainant first

Full written details of the allegation

If you are the interviewer, ask the complainant to

- Give full written details of their allegation(s).
- Provide the dates and times of each instance of inappropriate behavior in their complaint.
- Identify any witnesses to these incidents.



4. Meet with the complainant and witnesses

- Meet with the complainant and go through their complaint to ensure you understand each allegation fully.
- Encourage them to bring a colleague or Trade Union representative to the meeting for support (this is their statutory right so must be offered).
- Speak to any witnesses to the incidents and take notes.
- After each interview, type up the notes.
- Provide each participant with a record of the interview and ask them to sign off on the accuracy of their account.



5. Notify and interview the alleged perpetrator and their witnesses

- Give the alleged perpetrator written details of the complaint.
- Ask them to respond to each allegation, in writing, stating their recollection of each incident.
- Invite them to a meeting to discuss the complaint with you.
- Encourage them to bring a colleague or Trade Union representative to the meeting for support (this is their statutory right so must be offered).
- Go through each allegation with them and take notes.
- Let them respond and
 - explain their recollection of events
 - give their reasons for behaving this way
 - provide any mitigating circumstances
 - provide any witnesses to the behaviour.
- Interview any of their witnesses to the alleged behaviour.

Provide each person with a record of their interview and sign off the accuracy of their account.

Seek further clarification

- If the accounts of the complainant, perpetrator or any of the witnesses are very different or confusing, seek clarification.
- Invite them to another meeting.
- Ask further questions and/or request additional information where appropriate. Update your records if required.

6. Document investigation results

On conclusion of the interviews, you should provide a written summary to the investigation leader.

In some organizations, you may be asked to recommend a course of action. However, it is usually the investigation leader who makes the recommendations.

Either way, all the evidence and the circumstances should be considered carefully before reaching a conclusion.

Unable to make a decision

Many harassment and bullying claims are “he said, she said”.

At the end of the investigation, you may have credible yet conflicting statements from the complainant and alleged perpetrator.

In these situations, you may be unable to decide who is telling the truth and make a fair and reasonable decision.

As long as you investigate thoroughly and document your findings, you’ve done your job.

If there are any further incidents, you can revisit this file and take a fresh look at the evidence.

7. Making the decision

If you have sufficient evidence and are the person asked to make the decision, ask yourself this question.

Could what has taken place be reasonably considered to have offended/humiliated the complainant?

Make your decision.

If the complaint is upheld, management will recommend, with advice from relevant internal parties, whether to take disciplinary action.

This action may range from a verbal warning to termination.



8. Investigation closure

The investigation leader meets with the complainant and provides a brief written notice of the investigation results.

This notice does not include details of disciplinary actions, other than in the case of termination.

The alleged perpetrator is also provided with a written summary of the investigation results.

Disciplinary actions are documented and may be communicated separately.

All relevant interview notes and investigation documents should be retained for at least six months.

Complainants in the UK have a 13-week time limit to make a complaint of harassment against their employer, to an Employment Tribunal.

However, complainants can take civil or criminal action against the individual who perpetrated the harassment up to six years later. You may wish to retain your records for a longer period in serious cases.



9. Right to appeal

Where disciplinary action is taken, you must inform the individual of their right to appeal if they are unhappy with the decision. Provide them with a copy of your appeal process.

10. After the investigation

In most cases, the perpetrator remains in their job. It is crucial to explore how you will rebuild the relationship between your two employees after the investigation.

It is a good idea to consider access to counselling, mediation, coaching, training or other support for both individuals. If you are the manager of both employees, you should carry out regular reviews with them individually to ensure there is no victimization of either person.

