

Checklist: Things to consider – Spectrum of risk

Seriousness

- Is it possible that your organisation may terminate the employment of the respondent, if the allegations are proven?
- Is the complainant or respondent very senior in the organisation?
- Would the alleged conduct be a serious breach of your policies, if it did take place?
- Would the alleged conduct be a breach of any law or other enforceable rule of conduct, if it did take place?

External Stakeholders

- Could the alleged conduct have broader implications for the organisation (such as, needing to contact customers or other external stakeholders), if it is found to have taken place?
- Could the organisation be required to report its handling of the matter to outside regulators, such as accreditation bodies, ombudsmen or auditors?
- Is the Board of the organisation (or other senior stakeholders such as a government minister) interested in the outcome?
- Are there other external reasons (such as political reasons, relationships with stakeholders or contractual requirements) why the organisation should take a formal approach?

Industrial Relations

- Are there any industrial relations implications?
- Could this matter potentially set a precedent for future actions by the employer?

Policy Requirements

- Are either of the parties already involved in another workplace process (such as a disciplinary process or poor performance management) which means that the organisation needs a particularly detailed and robust determination of the allegations?

Systemic Issues

- Are there potentially other people affected by the alleged behaviour, who may also come forward?

Complexity

- Are there multiple parties, numerous allegations, complex information or voluminous documentation?

Legal risk

- Is either party anticipated to have a highly litigious or aggressive response to the process?
- Is it likely that this matter could result in legal action against the organisation?

Reputation

- If these allegations became public somehow, would it be a high-profile media story which may affect reputation and morale (rather than just the subject of low-level industry gossip)?
- Are leaks to traditional media or social media likely?

Financial Risk

- Is much money at risk (eg penalties, repayment of sums wrongly paid)?

Values

- Does the organisation want to send a clear message to employees that this sort of alleged misconduct will be taken seriously?

CHECKLIST for ensuring your investigation is procedurally fair

- The respondent to the allegation/s is entitled to know all the allegations made against him or her and must be given the right to respond and adequate time in which to respond;
- Provide details of the possible penalties when the allegations are put to the respondent so that the respondent knows the possible outcome of the investigation;
- Investigate promptly or within a reasonable timeframe;
- Provide a right to have an appropriate support person of their choice;
- Require all participants to maintain confidentiality and make all reasonable efforts to ensure breaches of confidentiality do not occur;
- Conduct interviews separately, so there is no possibility of collaboration or collusion;
- Ensure all participants are aware that victimisation, reprisals or disadvantage because of involvement in the investigation will not be tolerated;
- Ensure all relevant witnesses are interviewed and given an opportunity to relate their version of the events. Consider all relevant evidence. Ask the complainant and respondent if they wish to nominate witnesses but explain the investigator will ultimately decide if those witnesses are in fact relevant to the allegations that have been made;
- The investigator or any decision-maker should not have a personal interest in the matter being investigated. Exclude actual or perceived bias from the process;

- Ensure that there is sufficient evidence to make the findings on the balance of probabilities. A decision should not be made until all reasonable inquiries have been made;

- The investigator must be impartial in assessing the credibility of the complainant, respondent and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report;

- Comply with the organisation's procedures;

- Each party should be given the opportunity to respond to contradictory material that may have been raised against them by the other party or by a witness during the investigation. This means that if you are contemplating writing a report which contains conclusions adverse to the interests of any person, that person must be given the opportunity respond to that evidence and to put forward material that may influence the outcome of the report, and that person's defence should be fairly set out in the report.

Guide for Drafting a Complaint – A Guide for Complainants

An investigation involves making findings about whether alleged actions occurred or not.

It is important that allegations are formulated in a way that allows findings of fact to be made in an investigation.

If the allegations are clear, simply stated, and specific, the investigator will be able to understand your concerns and make findings about whether or not the alleged actions did occur.

Drafting Allegations

In order for the investigator to make findings of fact, the written allegations need to be:

- accurate (the information that you provide is correct)
- specific (sufficiently detailed) and
- complete (all the alleged events are listed - in chronological order if possible)

Keep the allegations **brief**. Your evidence in support of the allegations can be obtained later.

Express yourself **clearly and simply**. Don't use dramatic language.

Focus on the **specific actions** that you believe someone has done. Avoid general criticisms.

If you have allegations against more than one person, set these out in **separate statements**.

Content of Complaint

If you believe that someone has done more than one thing concerning you, explain each of these matters separately. In order to provide a complete and accurate list of the alleged events, for each individual alleged event, write specifically:

- what you say happened to you,
- when you say it happened,
- where you say it happened,
- how you say it happened, and
- whom you say acted - or failed to act – in relation to you.

Generally speaking, information about witnesses and documentation do not need to part of the allegation. This information is usually part of all the evidence that may be provided to the investigator when they are investigating the allegations that you have made.

Who was present may be relevant to the actual allegation (e.g. that you allege that you criticised in front of others at your workplace). If this is the case, then reference to who was present should be part of the allegation itself (per example below).

Allegations should **not** include statements of emotional reaction. This is because it is not part of the investigator's role to make findings of what your emotional response was.

An Example of an Allegation

1. *On July 23rd, in the morning team meeting, Mr Smit, my manager, raised his voice and shouted to Ms X, in front of 6 other people, "I'm not going to repeat this again. Are you completely stupid?". When he left the room, he slammed the door loudly.*
2. *On July 24th, Mr Smit walked past Ms X without acknowledging her.*
3. *That afternoon at 2pm, Mr Smit sent Ms X an email saying: " Make sure you complete the report and have it on my desk by 4pm. I won't ask again". He did not address Ms X by name, nor did he sign off the email, nor did he put please and he had not provided Ms X with the deadline prior to that time.*

These statements are capable of being 'proven' or 'not proven' (or partly proven) by the investigator (on the balance of probabilities).

On the other hand, a statement such as: *"Mr Smit behaves in a completely unacceptable way. He is very rude and no-one has any respect for him. I am really intimidated and stressed"* is too general to be tested factually. This is because it lacks specific detail to support the general allegation made of 'rudeness' or 'unacceptable behaviour'. In effect, such a general statement about Ms Smit is one of personal opinion only.

With regard to detail that you cannot **accurately** recall, you may wish to clarify what level of detail you can recall. It may be, for example, that you can recall a time frame or period - *"on or around July 23rd", or, "in the week of July 23rd",* rather than a day.

If you are not sure of the exact words that were used in relation to an allegation, you may wish to state, for example, *"Mr Smit called me stupid and said words to the effect that he had to repeat things for me"*.



Try to avoid allegations with the word, "always", "occasionally", "frequently". State how often you are alleging that an alleged action occurs, as part of the allegation, e.g. "Three to four times a week, over the period from December 2016 to March 2017".

Once the investigation process begins, the investigator will make findings about only those alleged events which have been set out in writing. The investigation process will be more efficient if the allegations that you provide are **all** of the matters that you say have happened.

Checklist: Are you impartial?

If the following procedurally fair steps are taken, you can be confident that you will be able to defend your investigation from criticisms of partiality or bias. Ask yourself if you are able to:

- Have no preordained ideas or preferences about whether the allegations are true (honestly!);
- Have no pre-existing special relationships with the complainant, the respondent or any witnesses who might give key evidence;
- Have no pre-existing relationships with your instructor or stakeholders in the organisation that may impact on your independence and impartiality, in reality or as perceived by the parties;
- Have no personal interest in any particular outcome, and the allegations have no relevance to you or your close colleagues (such as criticisms of your division internally);
- Be confident that you are not, and will not become, a witness yourself;
- Be impartial in assessing the credibility of the complainant, respondent and any witnesses, and where appropriate, include your observations and conclusions about the participants' credibility in the investigation report;
- Anticipate and manage possible perceptions of a conflict of interest or bias before the investigation commences;
- Treat all participants fairly and consistently by adhering to a sound and planned investigation process from the outset;
- Keep an open mind about the allegations, and maintain the belief that the respondent is innocent throughout the investigation, unless and until the evidence proves otherwise;
- Remain at arm's length from the participants during interviews and the investigation process;
- During the investigation remain at arm's length from your instructor in the organisation or other stakeholder's who may attempt to influence you with their preferred outcome;
- Ensure that there is sufficient evidence to make the findings and not make a formal decision until all reasonable enquiries have been made;
- Resist pressure by others in your organisation to make a finding in a particular way or to change the report after it is completed, unless the change is soundly based on relevant evidence and only after independently and impartially considering that evidence.

You must be able to do **all** of these things in order to be, and be perceived to be, impartial.

Checklist: Unknown or anonymous complainant

- Do not proceed with a formal misconduct investigation unless the allegations are sufficiently clear and specific to be understood by the respondent;
- Explain to the respondent that the organisation has decided to investigate the allegations, even though the complainant is anonymous/unknown, but this does not change the respondent's (or the other participants') obligations of confidentiality with respect to the matter;
- Tell the respondent that you understand it is frustrating not to know who made the complaint, but it is better not to speculate about who it is;
- Explicitly direct the respondent not to try to find out from other employees who made the complaint (even though this should follow from the direction to maintain confidentiality about the investigation and the matters involved in the complaint);
- Tell the respondent you believe that the allegations are clear enough to be understood, without the complainant's identity;
- Describe your decision about anonymity in the report and note that you believe that procedural fairness was afforded to the respondent, even though the complainant's identity was not known;
- When analysing the evidence in your report, discuss what impact the anonymity may have had on the evidence collected.

Checklist: What to explain to participants at the start of the investigation

You will need to explain:

- The scope of your instructions, for example: “I am investigating allegations of bullying made by Charles Hamilton against you. Those allegations have been provided in writing to you. It is my job to determine whether those allegations are proven or not, on the balance of probabilities. If I find that you did engage in the conduct Charles Hamilton claims, I will also make a decision about whether those actions were a breach of policy”;
- The organisation has asked (or required) the participant to assist in the investigation;
- The procedure you intend to follow in the investigation, its expected timing, and your role;
- That they are expected by their organisation to: participate in good faith; provide relevant and truthful information to the best of their knowledge; and comment only on what they themselves witnessed (which can include relevant hearsay evidence) but not what they guess, speculate or suspect has happened;
- The participant’s right to have an independent support person of their choice accompany them during the interview process, (subject to the support person not also being a witness or known to the investigator or the parties) and the support person’s role;
- The participant can request a break at any time in the interview;
- The participant may refuse to answer a question or can request to stop the interview at any time. If they do not provide information, however, the investigation will continue without the benefit of the participant’s perspective;
- They can nominate any relevant witnesses (*complainant and respondent only*), though the investigator will have final say over who is interviewed;
- All participants have a legal right not to be victimised as a result of making allegations, responding to allegations or participating in an investigation. You should state the repercussions should any such victimisation occur, and what they can do if victimisation occurs;
- How you will protect the confidentiality of the information they give you;
- How the information provided in the interview will be recorded, how it will be used in the investigation, where it will be stored and who will have access to it, and that you will give them a copy of the recording, transcription and/or notes of interview;
- Nothing is off the record, and all comments made (including before and after a recording device is turned off) will be noted and, if relevant, included in the investigation;



- Their evidence may be put to any other party for a response and if so they will be identified by name;
- The strictly confidential nature of the process – get all participants’ agreement to maintain confidentiality, and to avoid speaking about the investigation to any other staff;
- Follow-up or second interviews may be required, and if so, you will contact them;
- How the participant can contact you after the interview to provide any further information;
- Details of the Employee Assistance Program or other available supports in the organisation.

Sample Verbal and Written Communications

Please note: Communications to the parties should cover the following topics, however, the level of formality required will vary from organisation to organisation. The suggested communications can be tailored to suit your organisation.

SAMPLE WRITTEN COMMUNICATION FOR COMPLAINANT

TO BE TAILORED FOR EACH MATTER AS APPROPRIATE

Dear [complaint name]

I refer to your complaint **dated**. [Employer] takes all workplace complaints seriously and in this instance, it has been decided that an investigation will be conducted into the complaint(s) you have made. Until the investigation is completed [employer] will form no opinion as to whether inappropriate conduct has occurred.

Investigation Process

This investigation will be conducted by **[name]**.

In order to conduct the investigation in a procedurally fair way, it is necessary that your complaint is particularised, coherent and complete so that [respondent] is clear what actions they are alleged to have taken, when and where this occurred. These allegations will then be provided to [respondent] for a response.

The investigator will contact you shortly to arrange an interview to commence this process *OR* **[name HR]** will assist you in particularising your allegations and thereafter [investigator] will contact you to arrange an interview about them.

You are entitled to **union representation or** a support person during this process. However your support person cannot be a person who was present on any of the occasions when the behaviour is alleged to have occurred. Please let the investigator know who you will be bringing to the interview, if anyone.

You will be given an opportunity to explain your complaint in a **recorded/noted** interview and you will be provided with a copy of those interview notes. You will be asked to respond to specific questions designed to assist in the determining the facts regarding the allegations.

As part of the process, the investigator may also interview relevant witnesses if s/he considers this necessary, and collect any other relevant evidence. You will have the opportunity to suggest relevant witnesses. The investigator will then make findings of fact on the balance of probabilities as to whether the allegations made by you are proven or not.

You will be given the opportunity to comment on any information collected which conflicts with what you have said, where this is material to establishing what has occurred.



From the facts established, on the balance of probabilities, the investigator will also determine whether there has been any breach of workplace policy/policies by [respondent].

You will be provided with verbal feedback by [role] in regard the findings of the investigation.

Confidentiality

This is confidential matter. All parties to this complaint and all witnesses interviewed are bound by confidentiality, and you, and all participants are required not to discuss this matter, or your involvement in an investigation process.

This means that you should not discuss your allegations or subsequent interviews, in or outside of work, either directly or indirectly, unless you speak to [contact person in organisation] about the process, a medical professional or to your support person if you wish to have one. This will ensure the privacy and dignity of those concerned. It will also enable you and others to give evidence free from the influence of others.

OPTIONAL: During the investigation process [respondent] has been asked not to contact you.

Any breach of confidentiality will be considered a wilful breach and you will place you at risk of disciplinary action.

Stand down [if appropriate and in accordance with policy]

Given the nature of this matter, you are not required to/you are requested not to attend the workplace until the investigation and the outcome are resolved. You will continue to be paid during this period. If you have any personal property or resources that you wish to have available to you in order to respond to the allegations, please contact [insert contact details] who will ensure that your property is provided to you.

Medical clearance

As you are currently on sick leave/have indicated that you are unwell, we will require a medical certificate from your GP, confirming that you are fit to participate in the investigation process and outlining and special arrangements that we need to make to enable your participation.

Support

We appreciate that an investigation processes can be stressful for all concerned. Please note that you are encouraged to make full use of the support services available to you, including the Employee Assistance Program (EAP). Contact details are below. If you have any questions now or at any stage in the process, please contact [contact details in organisation] or raise them with the investigator

Yours sincerely

Attachments: EAP details



SAMPLE WRITTEN COMMUNICATION FOR RESPONDENT

TO BE TAILORED FOR EACH MATTER AS APPROPRIATE

Dear [respondent name]

I am writing to formally notify you that I have received a complaint from [name of complainant(s)] alleging **inappropriate conduct** by you in breach of **workplace policies**.

[Employer] takes all workplace complaints seriously and in this instance, it has decided that an investigation will be conducted into the complaint made. Until the investigation is completed [employer] has no opinion as to whether any inappropriate conduct has occurred.

Either: Detail of the allegations made against you are attached to this letter.

or: We are in the process of determining from the complaint, the detail of the specific actions you are alleged to have taken and will provide you with that detail as soon as we are able, so that you have a fair opportunity to respond.

You will be provided with sufficient time to consider these allegations prior to being interviewed about them.

Investigation Process

This investigation will be conducted by **[name]**.

The investigator will contact you to arrange an interview at an appropriate time in the investigation process and will at that stage provide further detail about the process.

You are entitled to **union representation or** a support person during this process. However your support person cannot be a person who was present on any of the occasions when the behaviour is alleged to have occurred. Please let the investigator know who you will be bringing to the interview, if anyone.

You will be given an opportunity to respond to the allegations in a **recorded/noted** interview and you will be provided with a copy of those interview notes. You will be asked to respond to specific questions designed to assist in the determining the facts regarding the allegations.

As part of the process, the investigator may also interview relevant witnesses if s/he considers this necessary and collect any other relevant evidence in order to make findings of fact on the balance of probabilities as to whether the allegations made against you are proven or not.

You will be given the opportunity to comment on any information collected which conflicts with what you have said, where this is material to establishing what has occurred.

From the facts established, on the balance of probabilities, the investigator will also determine whether there has been any breach of workplace policy/policies.



If it is found proven that you have breached any workplace policies, [employer] may take action consistent with the disciplinary policy and process, up to and including termination, depending on the seriousness of the matters proven.

Confidentiality

[Employer] treats this matter confidential. All parties to this complaint and all witnesses interviewed are bound by confidentiality, and you, and all participants are required not to discuss this matter or your involvement in the investigation process.

This means that you should not discuss this document or subsequent interviews, in or outside of work, either directly or indirectly, unless you speak to [contact person in organisation] about the process or to your support person if you wish to have one. This will ensure the privacy and dignity of those concerned. It will also enable you and others to give evidence free from the influence of others.

Any breach of confidentiality will be considered a wilful breach and may place your continued employment at risk.

Suspension of employment [if appropriate and in accordance with policy]

In order for an investigation to occur/Given the nature of this matter, your employment is suspended with pay until the investigation and the outcome are resolved. This suspension takes effect immediately. During your suspension with pay, you may not attend the workplace. You must not contact any member of staff except through [insert appropriate contact details]. If you have any personal property or resources that you wish to have available to you in order to respond to the allegations, please contact [insert contact details] who will ensure that your property is returned to you. This is a formal direction and any breach by you will place you at risk of disciplinary action.

Your access to work email, intranet [or other online resources] is also suspended until this matter is resolved. If you require information from those sources to prepare your response, please contact [contact details in organisation].

Support

We appreciate that an investigation processes can be stressful for all concerned. Please note that you are encouraged to make full use of the support services available to you, including the Employee Assistance Program (EAP). Contact details are below

If you have any questions now or at any stage in the process, please contact [contact details in organisation] or raise them with the investigator

Yours sincerely

Attachments: Statement of Allegations/EAP details



SAMPLE WRITTEN COMMUNICATION TO A WITNESS

TO BE TAILORED FOR EACH MATTER AS APPROPRIATE

Dear [Witness name]

[Employer] has received a workplace complaint. We take all workplace complaints seriously and in this instance have commenced an investigation into the allegations made.

You have been identified as someone who may be able to assist the investigator in determining the facts of the complaint. **No allegations have been made against you and you have been identified as a witness only.**

We are asking you to participate in this process as it is important for fairness to everyone involved that we are able to accurately establish what happened.

[Investigator name] is conducting the investigation. S/he will be in contact with you over the **next week** to arrange an interview time with you.

You will be asked to respond to specific questions relating to the complaint. There is nothing to bring to the interview or to prepare in advance. You will be provided with more detail about the matters being investigated at the interview.

Until the investigation is complete, the organisation has no view about whether anything inappropriate has occurred or not.

As a participant in the investigation, you are required to maintain confidentiality. This means that you should not discuss this email or your subsequent interview, in or outside of work, either directly or indirectly, unless you speak to me about the process or to your support person if you wish to have one. This will ensure the confidentiality, privacy and dignity of those concerned. It will also enable you to give evidence free from the influence of others.

The information you provide to the investigator is likely to be used to help determine what has happened. It may also be provided in part to other participants if it conflicts with what they said and if it is important to determining what happened.

If you have any queries about the investigation process, please contact me directly. Thank you in anticipation of your assistance.

Regards,

[Employer]



SAMPLE OPENING COMMENTS IN INTERVIEW WITH PARTICIPANTS IN A WORKPLACE INVESTIGATION

Assuming you have previously explained the process to the participants along the lines set out above, the following matters should be explained again at the start of the interview, on the record and the participant should be provided with an opportunity to ask any questions.

The language and level of formality can be adapted to suit your organisation.

Purpose:

In order for employer to uphold its employment policies, it is important that this investigation discovers the facts of what has happened. Therefore your complete and honest information is important.

Breaks:

You can ask for a break at any time, including to speak to your support person privately. You can also ask that we reconvene at another time.

Assessment:

Although I may say things like, 'yes, right, Ok, thanks' in the course of our conversation, I am not actually evaluating what you are telling me. I will do that after the interview, when I have collected all the information.

Documents

If you provide with documents in support of what you are saying, please mark the parts that are relevant and also note which allegation they are relevant to.

Witnesses

If there are witnesses to the matters you are describing, please name them as you go along.

Additional questions

It is likely that when I have considered your information, I may have additional questions or find I missed something. In that case, I will either pick that up by phone or request another interview.

Notes

Likewise if on reading the interview notes I will provide to you, you realise that you have missed something or want to correct any data, please let me know. Please note that I will add any additional comment or corrections to the notes but I will not delete anything from the original notes.

Contact

Can you please provide me with a contact email address that you are comfortable for me to use for material relating to this investigation

Confidentiality

Just to remind you again that you must not discuss this interview or the content with anyone else in the workplace

Do you have any other questions or are you OK to begin now?

SAMPLE CLOSING COMMENTS IN INTERVIEW WITH PARTICIPANTS IN A WORKPLACE INVESTIGATION

Are there any further matters relating to the allegations that you feel we have not covered adequately and which you would like to add now?

Notes:

I will send you a copy of the notes of this interview [when]. These are for your own reference and not to be provided by you to anyone else. *NB You may elect to hold all the notes back until you have had the initial interview with all parties*

Next Steps:

Once I have considered all the material from other interviewees, I will determine whether there is any contradictory evidence i.e. material that conflicts with what you have said and which is important to determining the facts of this case. I will then either speak to you again so you can respond to that material or I will email the relevant material to you for comment. It is likely to be at least [1/2/3 weeks] before I get to that stage of the process.

Do you have any further questions?

Communicating the contradictory evidence

If the evidence is to be put to the party in writing, it should be marked 'Strictly Private and Confidential'. Before sending the evidence in writing, it is a good idea to first ask the party for a confidential email address or mailing address.

The covering letter or email might state:

"Some of the evidence that I have collected in this case was not consistent with your evidence. I have set out that evidence below to give you the opportunity to respond to it, should you wish to



do so. If you would like to provide any comments on the evidence below, you can do so in writing, or in an interview, or over the telephone to me, on or before [date]. If you will require more time to consider and respond to this evidence, please let me know. This evidence is provided for the purposes of this workplace investigation only and is strictly confidential.”

If you seek a party’s response to contradictory evidence in an interview, the following explanation at the start of the interview (tailored as appropriate for your organisation’s culture and context), explains this part of the process:

“The main purpose of this interview is to provide you with an opportunity to respond to any contradictory evidence from participants in this investigation.

Contradictory evidence is evidence I have collected that is not consistent with your evidence. Providing you with an opportunity to respond to contradictory evidence is an important part of the investigation process.

I will be putting that contradictory evidence to you and inviting your comment. I may also ask some questions for you, to clarify your evidence and the allegations/responses you have made. If you need more time to consider and respond to the contradictory evidence I ask you about today, please let me know and I will allow you to take a break to consider the evidence and your response.”

Sample standard items of an investigation report

The standard items that may be included in a formal written investigation report are set out below.

There are many ways to write your analysis and findings, and the level of detail will be determined by the seriousness of the allegations and the risks to your organisation.

- Cover page marked 'Strictly Private & Confidential' and dated;
- Executive summary of the allegations, investigation and conclusions;
- The allegations;
- How and when the allegations came to the organisation's attention;
- The methodology for the investigation, including statements about:
- If you were 'appointed' by another person in your organisation, how you were appointed and when;
- Whom you interviewed and how;
- How you recorded the interview;
- What other evidence you collected and how;
- Whether you did a site visit; and
- Any other enquiries you made;
- What interviews were conducted, how the witness was considered relevant, for example, "Hans Borg, who was identified by the complainant as a witness to allegation 5". Include here a list of any relevant witnesses who did not participate and why and what, if any, impact this had on the investigation;
- A description of the documentary evidence and other evidence you have considered, including the written complaint, written responses, transcripts of interview and documents provided by the parties. If the material provided is voluminous, you can summarise such as 'Folder of documents provided by complainant as set out in Appendix A';
- A statement of your assessment of the credibility of witnesses if this has impacted on your findings;
- Any other evidence that was collected and considered; and
- A description of any 'issues arising' such as delay, parties' objections or procedural issues you considered.

Then for each allegation:

- The allegation;
- Any agreed facts (such as “The respondent agreed that the sum of \$4312.88 was withdrawn from the company’s cash account on 3 November 2016”);
- Analysis of the evidence, including any responses to contradictory evidence;
- A finding of fact for each allegation (see more detail below);
- Where you makes adverse findings against any person, confirmation that the person was given the opportunity to respond, and fair inclusion of his or her defence; and
- A consideration and succinct conclusion about whether the proven conduct amounts to a breach of policy.