

Key points in assessing and analysing evidence

- When you make findings of fact, apply the civil standard of proof — the balance of probabilities. Having considered all the evidence, ask whether the alleged conduct is more likely than not to have occurred.
- In assessing the evidence, you have gathered, consider whether it is relevant to the allegations, probative, and not overly prejudicial to the respondent. Consider how much weight to give this evidence, compared to all the other evidence.
- Evidence of past similar misconduct can be considered but be aware of the risks. You need to satisfy yourself that it is relevant to the allegations, and more probative than it is prejudicial.
- Give more weight to first-hand, direct evidence. It is more reliable than hearsay evidence.
- You can consider hearsay evidence if you have little other useful evidence. Remember that it is not evidence of what occurred, it is only evidence of what a person told someone else.
- Consider whether evidence is corroborated by other evidence, to assist you in your analysis.
- Analyse carefully poor recollections, evidence of lying, inconsistencies, and evidence of motive to bring a false complaint.
- Motive of the complainant in making the allegations may be relevant to your analysis, but an honest complainant should not be denigrated for having raised valid concerns of a breach of policy, no matter what motivated them to raise their concern.
- You may need to make your findings of fact based on assessments of the participants' respective credibility. If so, explain clearly in your report the basis upon which you have found a witness's evidence to be credible or not credible.