

Checklist:

When to put contradictory evidence to the parties for comment.

- The evidence contradicts a key part of the complainant's or the respondent's evidence or their claimed version of events.
- The evidence is likely to be used to make a finding of fact against a party.
- It is necessary or helpful to put to the party to test the accuracy of the evidence and the credibility of the witnesses.
- The party's response could assist in a meaningful way to weigh up the evidence you have collected.

If *any* of this applies to your case, you should put the evidence to that party for their response and expressly consider that response in your analysis. This will show how you have not only provided an opportunity to respond but have also taken into account that response.

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."