Published on *The National Law Review* https://natlawreview.com

Looking into workplace investigations, Part 12 – reporting fit for the job (UK)

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So you have asked your questions and made your notes and looked at any relevant documents. You have formed the necessary views about what happened if that is the question or why it did if that is the issue instead. Now you just have to write it all down and a good job done, yes?

In our experience, internal investigators do reach most of the right conclusions for most of the right reasons but can tend to undo some of that work by the way they reduce them all to paper. As I may (certainly should) have said in an earlier post in this series, your investigation is only as good as the parties to it or the Employment Tribunal can be persuaded it is. For that you need supporting evidence in the form of a report which is detailed on the points it covers, comprehensive of all the points it ought to cover, and above all, reasoned.

It is not for an Employment Tribunal or an opposing lawyer to seek to unravel your investigation simply because they would have done it differently or asked some further questions or approached different witnesses or included something else in the report. The only burden on you is to act within that first of the two 3 Rs of a robust investigation, the Range of Reasonable Responses. If your investigation reports shows that you considered a point and rejected it for a half-way sustainable reason, neither the ET nor that lawyer will find it easy to argue your conclusion to be outside that range. However, if instead of a reasoned conclusion on a point in your report there is just tumbleweed and static, there immediately is a vacuum into which either could imply something fatal to the legal integrity of your report – lack of reasonable care, perhaps, a failure to look at a key point or active bias or predetermination.

Therefore detail is good, detail is your friend. Rehearsing it all in writing is potentially a long and tedious job, but it will be worth it if ever your investigation is impugned. That means explaining your thought-process by express reference to the evidence you heard. This employee alleged X, and although that one said Y, I believed X because it is consistent with this document or that other witness or the other identified circumstance. Quote the specific bits of testimony or documents which get you to your conclusion. Tiresome, I appreciate, but keep in mind that while Acas says that an investigation report should be completed as soon as reasonably practicable, what is reasonably practicable depends on how much there is in the report. As a rule it is far better that a report is a week or so later than ideal but clearly a quality product than something knocked out quickly but

ultimately half-baked.

Though detail is good, it is also important to be clear in the report if there are parts of the disclosure or grievance which you did not investigate, and if not, why not. Making no mention of certain arguments or allegations will look like bias, negligence or predetermination unless you set out why you disregarded them. Bring on the other 3 Rs of a good workplace investigation, the focus on matters which are Recent, Relevant and Resolvable. If you reasonably considered a particular allegation to be past meaningful remedy because of its age, irrelevance or screaming triviality, it is entirely appropriate for your report to say so and then move on to those parts which have real practical significance.

The Acas guidance on workplace investigations includes a template report at the back, a turgid great thing almost guaranteed to produce a document heavy on structure and process but without nearly the same attention paid to the vastly more important question of content. Put bluntly, the format of your report is irrelevant. There is no need for separate schedules of documents reviewed, of witnesses, of interview notes, chronologies, etc. There is no need for the report to be in consciously formal or “legal” language. That said, neutral language is obviously critical if your impartiality is to be maintained. If you reject a particular point, fine, but do resist the temptation to kick it when it is down or make gratuitous comment on exactly how witless one would have to be to believe it in the first place, etc.

Ultimately you want your report to be persuasive as a story so that a potentially sceptical reader will at least respect the thinking behind it, despite their best efforts not to. A convincing narrative flow needs to set and follow some sort of order, whether a timeline or the sequence in which points were made in the original disclosure or grievance. Then it should be topped-and-tailed with some context and (only if you were asked to make them) your recommendations for next steps. Something like this perhaps:

1. What is the question I am investigating, and any questions I am expressly not looking into;

2. My executive summary of the main findings;

3. The tests or standards against which I assessed the evidence, whether statutory or regulatory definitions, contract or policy terms, industry practices, etc.;

4. The findings of fact I made in relation to each salient point, plus how I got there; and

5. If appropriate, what I think should happen next.

Then having written it all out, read it again as a single piece for a final check. If you can do so within the bounds of confidentiality, get someone external to the process to do so too. Are there any obvious inconsistencies or non-sequiturs? Can the reader see how I got from evidence A to conclusion B in each case? Are there any signs implying that I enjoyed rejecting some particular propositions more than I should have done and so fell off the tightrope of independence and defaulted to prosecutor or defence counsel? Have I referred to any evidence that one party didn’t see? And in particular, if I am under heavy fire in a boardroom or Employment Tribunal, is there anything at all in this that I can’t explain?

National Law Review, Volume XII, Number 182