

## Step 5 If there are witnesses

Witnesses can give important evidence that might help decide the outcome of a disciplinary or grievance case.

If witnesses have relevant information, the person investigating can ask them to write a 'witness statement'.

The person investigating can also have a meeting with a witness to ask them what they know or saw. Someone should take notes during the meeting. At the end of the meeting, the witness should sign the notes and these can also form a witness statement.

### Taking a witness statement

A witness statement will usually be a signed copy of the notes from an investigation meeting. A witness should be given a copy of their statement to check it is accurate. Once they have checked the document, they should sign the statement to confirm it is accurate.

The person investigating might decide a witness can give a statement without having a meeting. For example, if the witness:

- does not work for the organisation, for example they're a customer or client
- only needs to give very simple information
- is ill and cannot come to an investigation meeting

The person investigating should ask the witness to write:

- their name and, where applicable, job title
- the date, place and time of any relevant issues
- what they saw, heard or know
- the reason why they were able to see, hear or know about the issues
- answers to specific questions, where necessary
- the date and time of writing their statement
- their signature

The witness should have reasonable time to give the statement.

### Witness statements taken in a meeting

A witness should be allowed to amend their statement but should sign any amendments they make. If an investigator believes the changes contradict what was said at the meeting, they might note this. They could also include both the original statement and the amended statement in the report.

If a witness refuses to sign their statement, an investigator should try to find out the reason and resolve the issue.

If they cannot resolve it, an investigator should still include the statement in their report. But they should state that the witness refused to confirm that it was an accurate reflection of the meeting.

### Talking to a large number of witnesses

If a large number of people witnessed the same incident, the person investigating should:

- talk to some of the witnesses
- check whether they're broadly saying the same thing

The person investigating does not have to talk to all witnesses, unless either of the following apply:

- they feel they're not getting enough information
- there are significant differences in what the witnesses say

## Reluctant witnesses

Some witnesses might be reluctant to provide evidence for an investigation.

In this situation, an investigator should:

- explore the reason a witness is reluctant to give evidence
- provide reassurance
- try to resolve any concerns they have

Where possible, investigators should avoid anonymous witness statements. This is so the person under investigation can fairly question any evidence against them.

An investigator should only make a witness statement anonymous in exceptional circumstances. For example, if a witness genuinely fears revenge action. The investigator should explain that if there are legal proceedings, an employer might have to share the names of anonymous witnesses.

Where anonymity is agreed, the investigator should carry out the interview and take notes as usual. They should then remove relevant parts to prevent identification.

## Sharing information and confidentiality

When getting information from a witness, it's a good idea to get their consent to be able to share it if necessary. For example, in case other people working on the investigation need to look at the information.

### Sharing witness statements

If an investigation leads to further action, the employer should give the worker who's under investigation a copy of written evidence. This includes witness statements.

If an investigation does not lead to further action, the employer can decide whether to share witness statements. If their organisation has a policy on this, they should follow it.

If an employer does not share the statements, the worker under investigation can ask for them. Workers have a right under data protection law (UK GDPR) to request information their employer holds about them.

### If a witness statement could identify a third party

An employer can refuse to share a witness statement if a third party could be identified from it, for example a customer or client. This is unless:

- the third party has given permission for it to be shared

- it would be reasonable to share it in the circumstances

However, an employer should look at alternative ways to share the witness statement. For example, removing names or redacting information.

### Accessing information in a report

If someone believes they've been named in an investigation report, they have the right to see any parts that:

- have information about them
- depended on information they gave

They should not be allowed to see private information about other people, unless:

- those people have given permission for the information to be shared
- it's reasonable for the employer to disclose the information anyway

An employer should look at alternative ways to share a report that contains private information. For example, removing names or redacting information.

### Keeping records

The employer should keep investigation reports for a while, in case there are any questions in the future. How long they keep reports might be set out in a workplace policy.

If the report includes people's details, the employer should store it securely and only allow access when necessary. Anyone who has access needs to follow data protection law (UK GDPR).

The report should be securely disposed of once it's no longer needed or is out of date. For example, it could be shredded.

[Find out more about data protection and record keeping from the Information Commissioner's Office \(ICO\)](#)