

The logo for Anderson Strathern, featuring a stylized 'AS' monogram in red and the company name 'Anderson Strathern' in white serif font.

AS Anderson
Strathern

In a disciplinary investigation, if your role is to advise but not alter decisions, what do you do when an investigating manager's recommendations for further action are just wrong or don't fit the allegations?

21 November 2017

Chris McDowall

Partner

Anderson Strathern LLP

Investigating disciplinary matters

- ACAS Code of Practice on Disciplinary and Grievance Procedures
- Appointment of investigating manager
 - Immediate Line Manager
 - Manager from another department
 - HR
- Dependent on your Disciplinary and Grievance policy
- Requirement of fairness

The role of HR

Chhabra v West London Mental Health NHS Trust [2013] UKSC 80

“There would generally be no impropriety in a case investigator seeking advice from an employer’s human resources department, for example on questions of procedure. I do not think that it is illegitimate for an employer, through its human resources department or a similar function, to assist a case investigator in the presentation of a report, for example to ensure that all necessary matters have been addressed and achieve clarity”

Ramphal v Department for Transport UKEAT/0352/14

- *Chhabra* imported an implied term that any report made by an investigating officer be the product of the case investigator
- Inference of improper influence

The role of HR

- Investigating officer must make the decision on findings as a result of his own investigation
- HR can give advice on questions of law and procedure
- HR should not make an assessment on culpability
- *Dronsfield v University of Reading UKEAT/0200/15*

The role of HR

- Document, in writing, the nature of advice given
- Be aware of data protection obligations
 - Subject access requests
 - Exemption of personal data subject to legal professional privilege

Conclusion

- HR can advise investigating officer on:
 - Fairness of process
 - Employer's policy on disciplinary action
 - Questions of law
- HR should always remain impartial
- HR should not:
 - Improperly influence the investigating officer
 - Alter the investigating officer's decision

Any Questions?

Chris McDowall

Partner

Anderson Strathern LLP

chris.mcdowall@andersonstrathern.co.uk

0141 242 6063