



MAPLES
GROUP

White Paper Conference 2022

Workplace Investigations

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Speaker - Karen Killalea

Partner and Head of Employment Maples Group



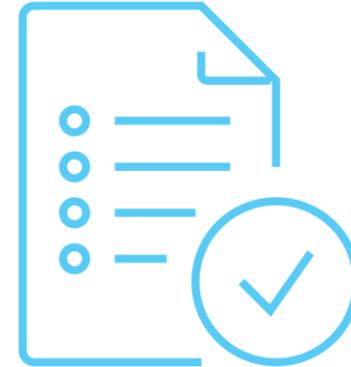
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Questions Workplace Investigations

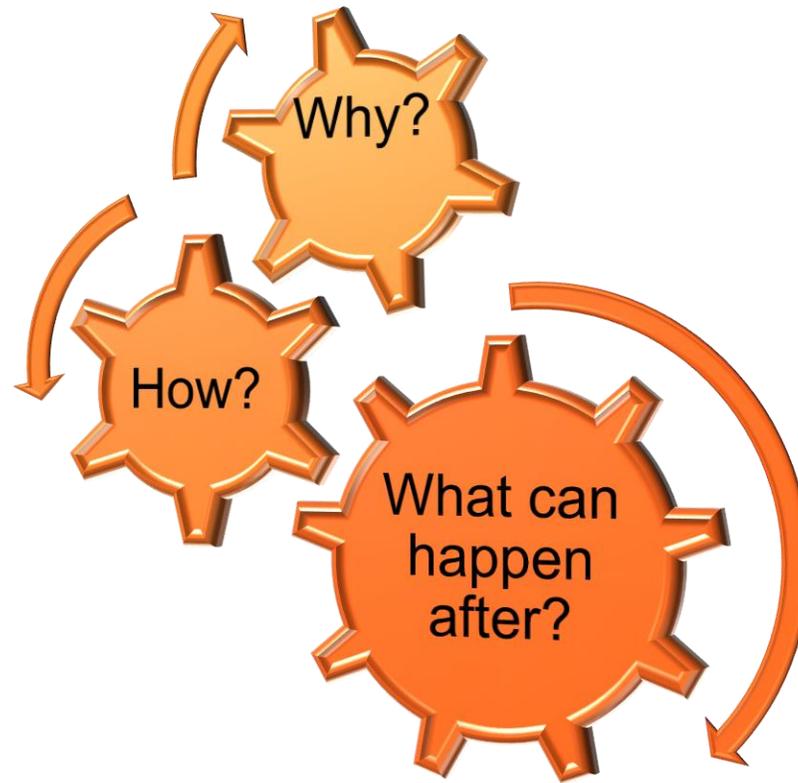
- Who do you involve in an investigation?
- How do you get started and stay on track?
- When do you allow cross examination?
- When do you allow written responses?
- When do you allow an appeal?

Who should you involve in an investigation?

- **The Investigator – “AEIOU”**
 - Available, Experienced, Impartial, Objective, Undaunted
- **Who is the best person from your business?**
 - Gender balance?
 - Recent caselaw – Mason v ILTB & Boland v Keanes Garden Centre
- **Who else is involved?**
 - The note taker
 - The witnesses (including the complainant if applicable)
 - Is the approval of the Board or any Sub-Committee of the Board required?
 - Only those who need to be in the loop should be in the loop



How do you get started and stay on track?



Different types of workplace investigations

Disciplinary

Protected
Disclosures

Bullying

Grievance

Harassment

How? - Codes of Practice or Employee Handbook?

Code of Practice on Grievance and Disciplinary Procedures

SI 146/2000

Section 42 Industrial Relations Act

Health and Safety Authority

Code of Practice on the Prevention and Resolution of Bullying at Work

Know the Code

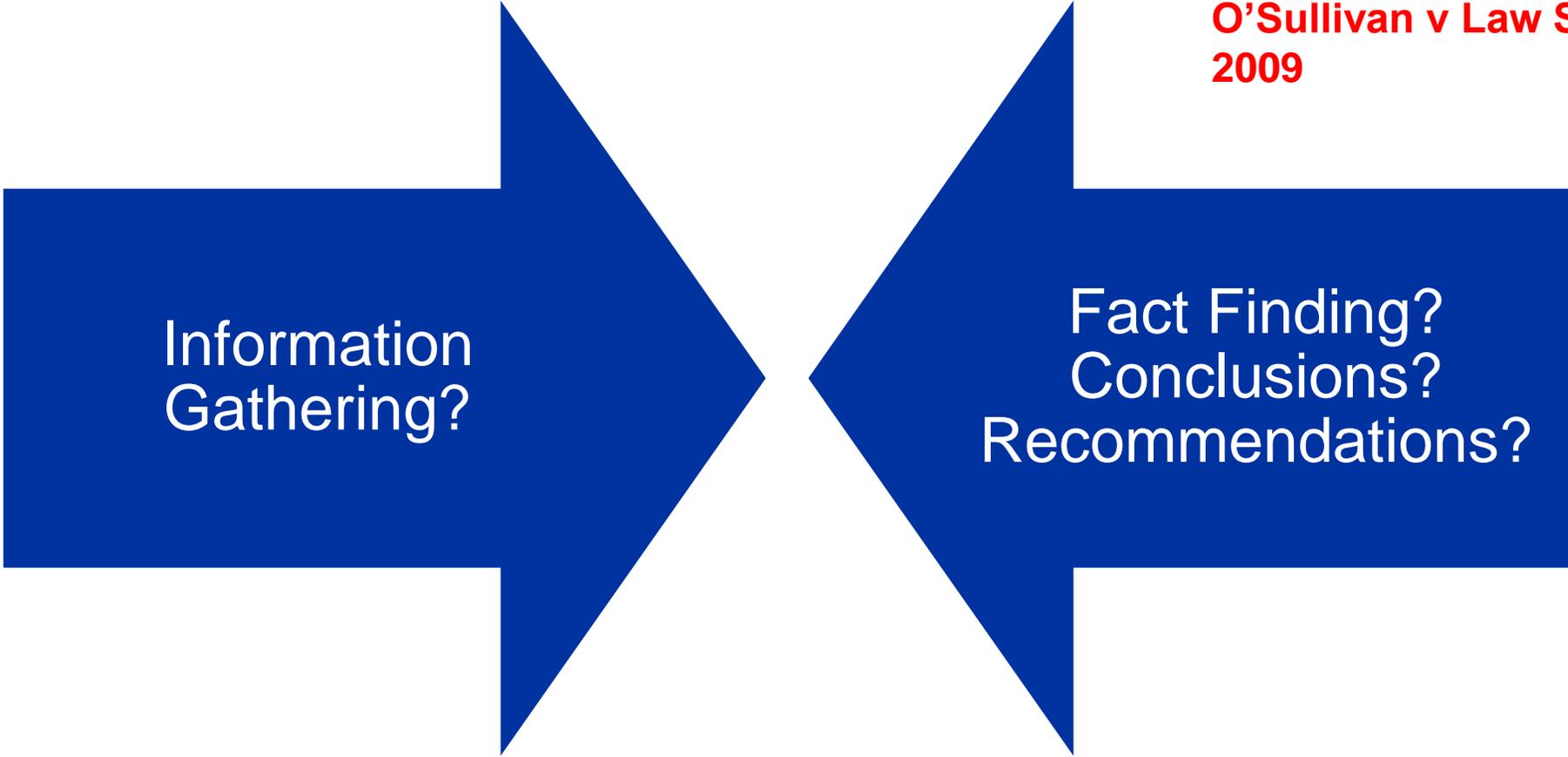
Irish Human Rights and Equality Commission

Code of Practice on Harassment and Sexual Harassment at Work

Code of Practice Protected Disclosures

Why? The nature of the investigation

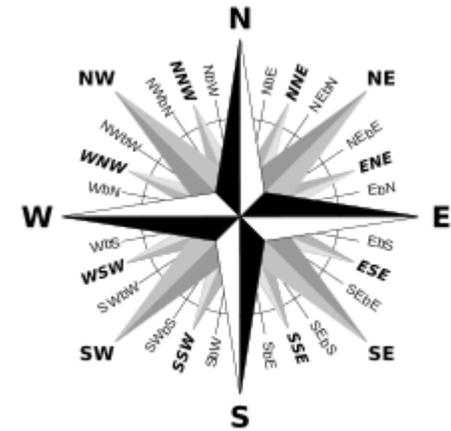
**O'Sullivan v Law Society of Ireland -
2009**



Information
Gathering?

Fact Finding?
Conclusions?
Recommendations?

When do you allow cross examination?



When do you allow cross examination?

- McKelvey v Irish Rail 2019 Supreme Court and Burns & Anor v The Governor of Castlerea Prison 2009

No absolute legal right to legal representation

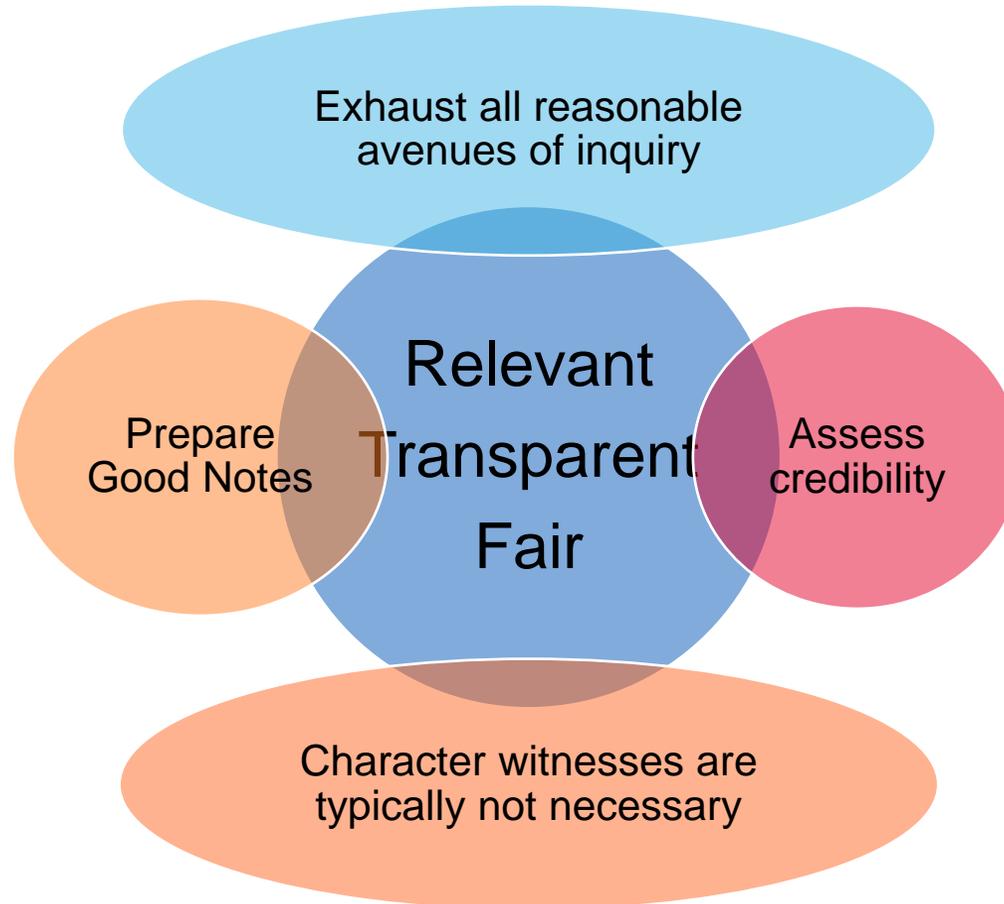
Permitted in exceptional circumstances

Difficult questions of law or complex questions of fact?

Must be necessary in the interests of fairness

Capacity of the individual and possible consequences

A note on interviewing witnesses generally

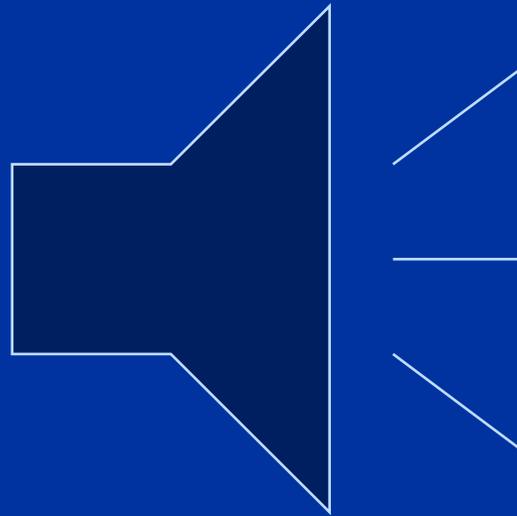


When do you allow written responses?

- Employer decides who to interview but must pursue all reasonable avenues of inquiry
- Record accurate notes of witness interviews
- Share the witness statements with the “accused” and as relevant with the complainant
- Employers cannot compel witnesses to present for cross examination - consider “written questions and responses”.

When do you allow an appeal?

Always



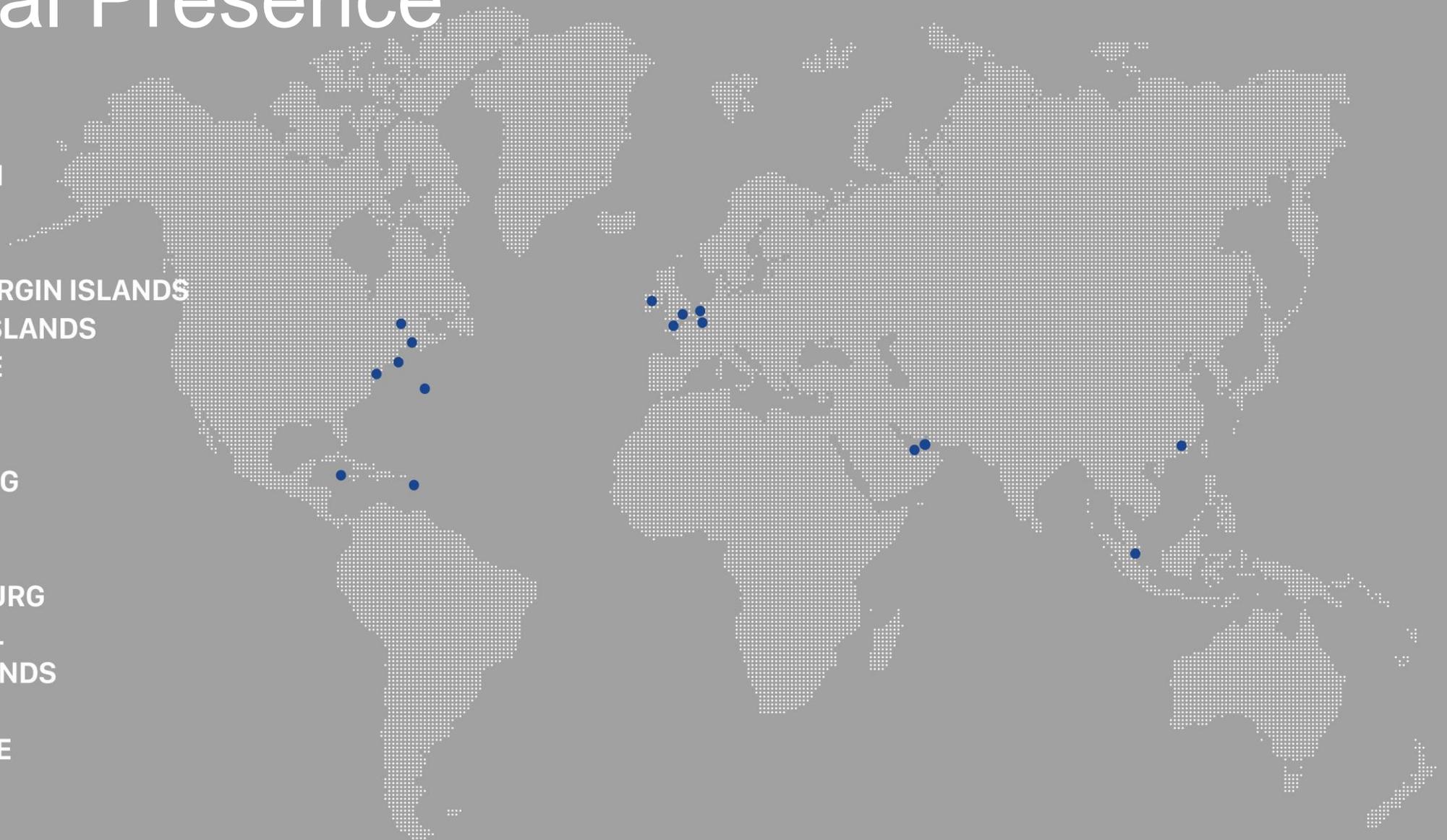


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