

Whitepaper Conference

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Wednesday 6th March 2024



Today's Presenter



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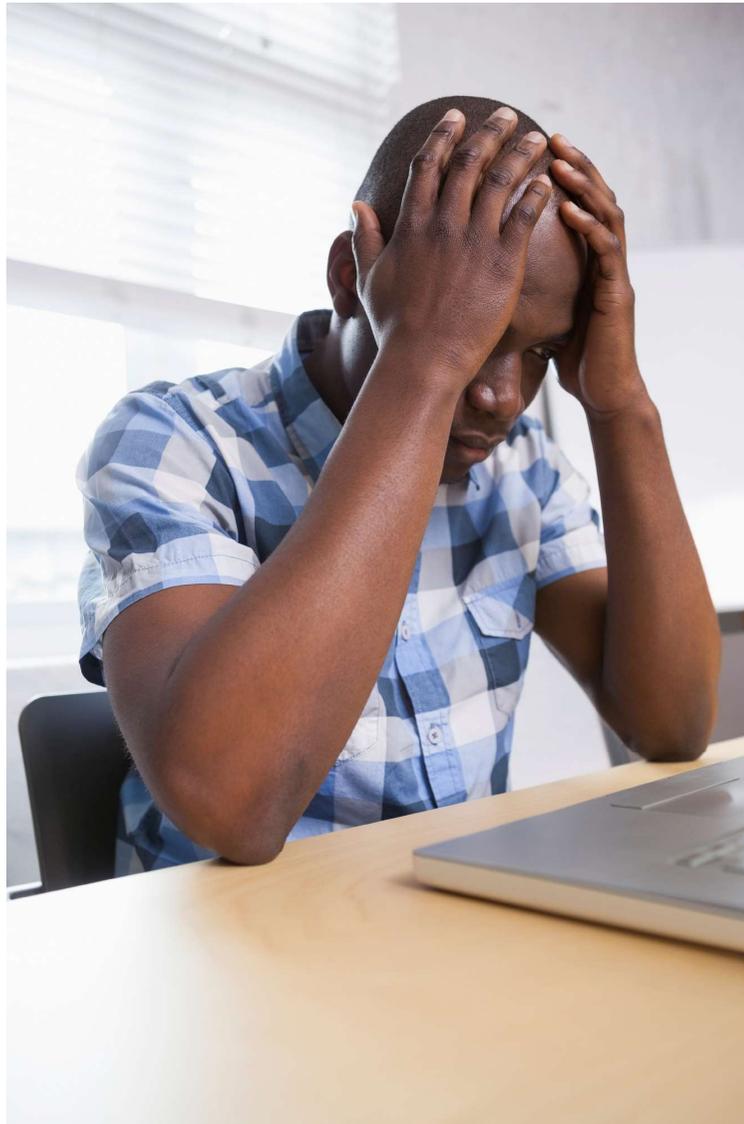
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"How - practically and legally - should you act when receiving repeated, confidential complaints about an individual, with complainants stating, "I don't want you to do anything; I'm just letting you know"?"



- Zara is an employee who has brought forward various complaints of sexual harassment about her manager, Noah. She alleges that she has often been subject to inappropriately suggestive remarks from Noah about her outfits at work. She says he is also overly inquisitive about her love life and what she gets up to at the weekend, which is making her feel very anxious.
- She has made repeated allegations to HR about Noah and about his conduct, but has made very clear she does not want her allegations to be dealt with as a grievance or to be investigated.
- HR have also received various other complaints about Noah from witnesses, but all state they don't want any action to be taken.

Why doesn't the individual want you to take action?



- Fear that the complaint will be traceable back to them?
- Fear of retaliation?
- Fear of being seen to cause a fuss?



Anonymity vs Confidentiality

- Any meetings which take place as part of the investigatory process must be held in a confidential environment
- However, the Company can not and should not guarantee confidentiality for the complainants/any witnesses
- Anonymity? Balance rights of the alleged victim against the rights of the alleged perpetrator. Employer's decision must be within the range of reasonable responses.

Some case law examples

<p>Practical guidance from EAT on protecting witness anonymity</p> <p><i>(Linfood Cash & Carry Ltd v Thompson)</i></p>	<p>It is necessary to carry out a balancing act between the perceived need for anonymity and the need for the employee being investigated to know the case against them and to be able to challenge that evidence.</p> <p><i>(Surrey CC v Henderson)</i></p>	<p>Confirmed it is possible to anonymise witness statements where witnesses have genuine fear of reprisals.</p> <p><i>(Ramsey v Walkers Snack Foods and Asda Stores Ltd v Thompson)</i></p>	<p>Anonymous witness evidence must be corroborated with other evidence</p> <p><i>(Atif v Dolce & Gabanna UK Ltd)</i></p>
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To investigate or not to investigate?

Issues

- Employer is “on notice”



- Individual’s rights

Balance whether the impact that investigating might have on the complainant employee is outweighed by the employer’s own legitimate need to investigate.

Questions?



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