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Anonymous complaints

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We do what's right

If no one will go on record – stating “I don’t want you to do anything, I’m just letting you know” but the complaints keep coming, what can and can’t you do?



Content

- ▶ Legal duties employer owes employees
- ▶ Why might anonymity be needed?
- ▶ The balancing act
- ▶ Should all complaints be anonymous?
- ▶ The ACAS Guide to Conducting Workplace Investigations
- ▶ Decisions on anonymity
- ▶ Tip offs – how to respond
- ▶ Takeaways

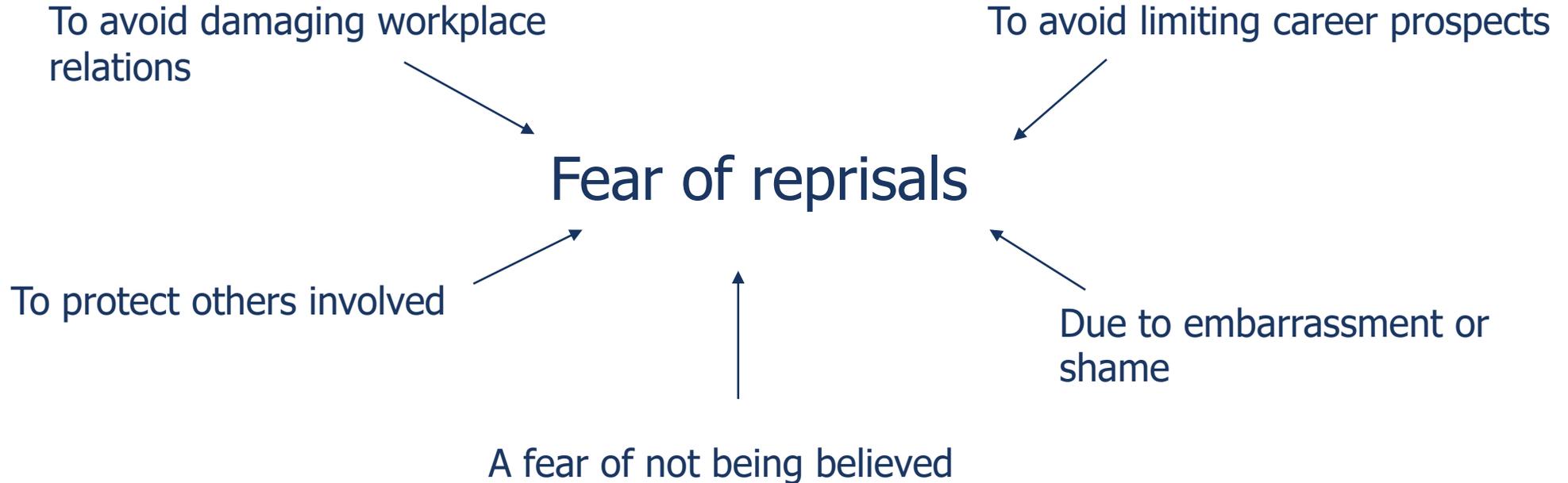
Anonymous complaints in the news



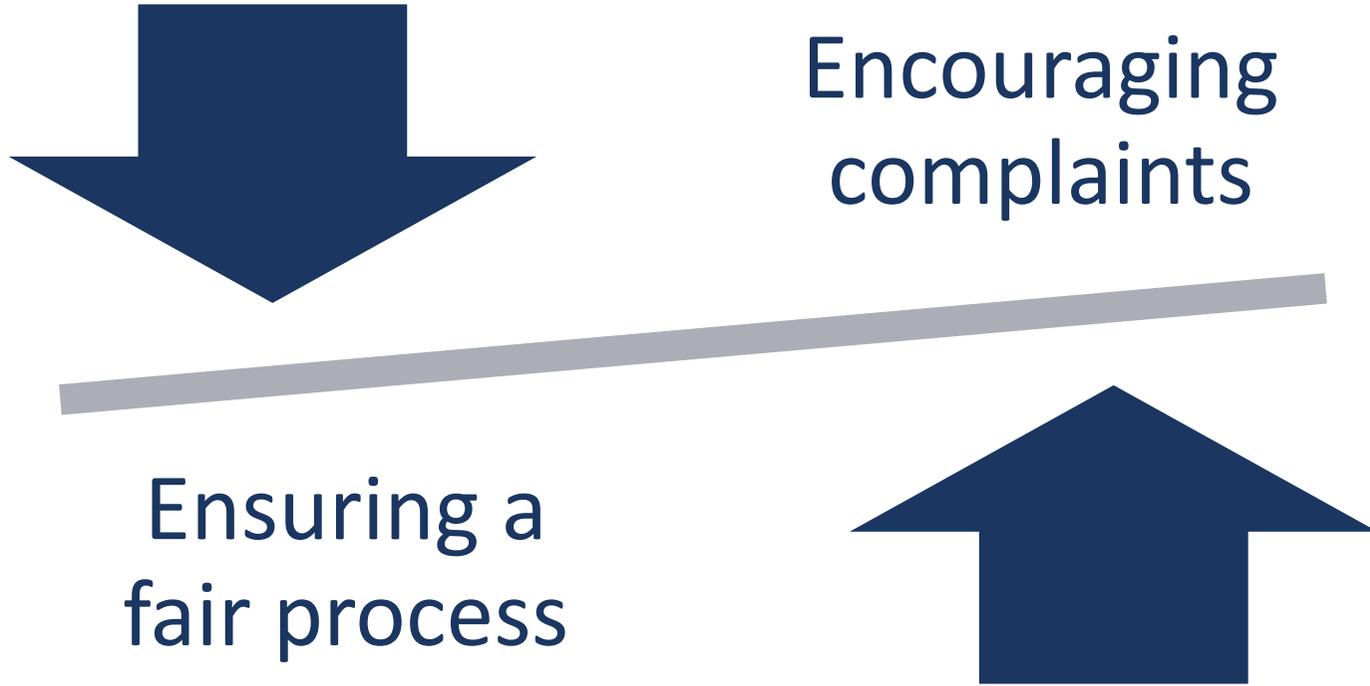
Legal duties to consider

- ▶ Health & Safety – mental and physical health
- ▶ Provide a suitable working environment
- ▶ Provide reasonable support
- ▶ Redress of grievances
- ▶ Fair disciplinary processes
- ▶ Mutual duty of trust and confidence
- ▶ Equality Act 2010 – discrimination, harassment and victimisation

Reasons for anonymity



Balancing act



Should all complaints be anonymous?

Pro

- ▶ The individual making the complaint is protected

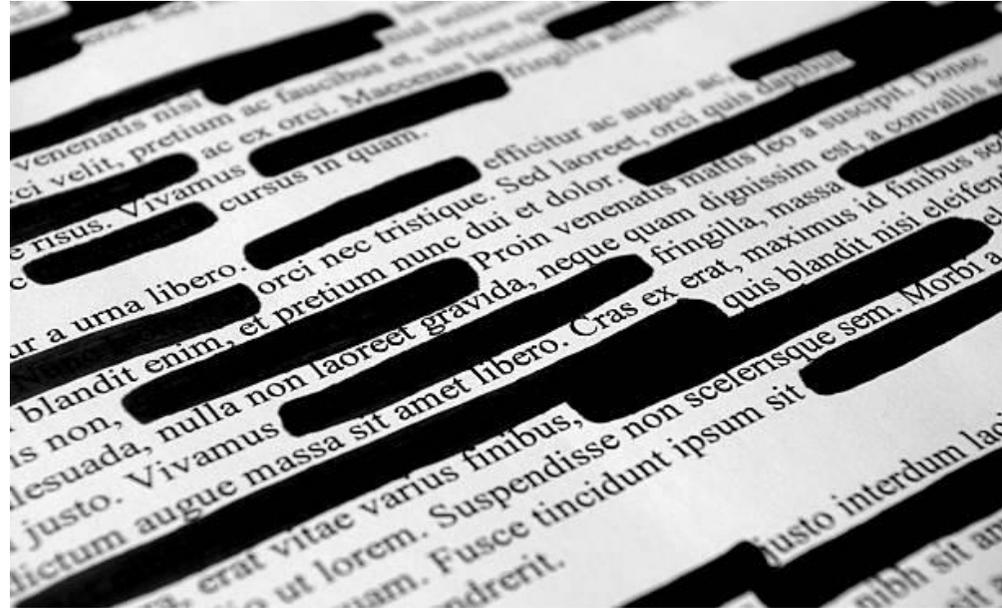
Con

- ▶ The individual making the complaint is protected!

The ACAS Guide to Conducting Workplace Investigations says that witness statements should only be anonymised in exceptional circumstances, where the witness has a **fear of reprisals.**

Taking an anonymous statement

- The ACAS Guide to investigations advises that where anonymity is granted, the witness statements should still be taken with all details included. The investigator can then decide what points should be omitted or redacted.



Questions to consider

- What is the nature of the allegation?
- Have similar allegations been raised in the past?
- Do I have enough information to conduct the investigation while keeping it anonymous?
- Does the complainer/witness have a legitimate reason for requesting anonymity?
- Will refusing the request hinder the investigation?
- Will the accused be able to answer the allegations made against them?

Don't guarantee absolute anonymity!

- ▶ If you do decide to proceed with keeping the complaint anonymous, it is important **not** to guarantee that anonymity will be protected no matter what.

***Woods v ACAS* 2205215/2019**

- ▶ Employee dismissed following an investigation into numerous complaints that he had sexually harassed colleagues.
- ▶ 16 witnesses interviewed as part of investigation.
- ▶ All witnesses told their comments would remain anonymous.
- ▶ Anonymity was thought necessary to encourage reluctant witnesses to give evidence – whether reluctant or not.
- ▶ Anonymity was also due to the 'sensitive nature of the enquiry'.

Woods v ACAS – Tribunal view

- ▶ Highly critical of the investigation – particularly that the rationale was the nature of the enquiry rather than the fear of reprisals.
- ▶ Treatment of witness evidence deemed unreasonable.
- ▶ The steps taken to protect anonymity went beyond ACAS' own policies and procedures.
- ▶ Too heavily weighted towards the complainants.
- ▶ Did not correctly balance the duty to investigate with the claimant's right to a fair process and the complainant's right to protection from retaliation.

Tip offs and informal complaints



What can't you do?

- ▶ Ignore them!
 - Even if it seems clear that the complaint is malicious or unfounded, the employer must be satisfied that there is no truth in it – and be able to back up that belief.
- ▶ Take disciplinary action without an investigation.

What can you do?

- ▶ Employers have a duty to prevent bullying, harassment and discrimination. Check your policies.
- ▶ Each situation will be different. Assess what information you do have. Is the complaint substantiated by others?
- ▶ Conduct a preliminary informal investigation – staff surveys, output reviews, social media checks.
- ▶ Encourage – but don't pressure – formalising complaints.
- ▶ Can it be addressed in another way e.g. team building, staff surveys?
- ▶ Unless there is a duty to do so?

What can you do?

- ▶ Proceed to a formal investigation.
 - ▶ This should be a fact-finding process only.
- ▶ Tread with caution if deciding to take disciplinary action on the basis of a complaint when you can't verify the source.
 - ▶ Look for corroborating evidence in relation to the anonymous complaint otherwise a dismissal could be unfair.
 - ▶ *Atif v Dolce & Gabbana UK Limited* [2021] 10 WLUK 604.

Things to remember

- The principal of fair process is no less crucial when witnesses want to remain anonymous.
- Anonymity should only be allowed if there is a real risk of reprisals.
- Blanket policies of anonymity are likely to be considered unfair.
- The accused has an equal right to answer the claims against them.
- Ignoring complaints is never the answer!

Questions & Comments

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