

BEST PRACTICE FOR APPROACHING INVESTIGATIONS

A Mini Guide

Certified



Corporation

www.bateswells.co.uk

Introduction

There will almost certainly come a time when your charity needs to carry out an internal investigation. The circumstances can vary widely. The investigation might be prompted by a complaint or an allegation of wrongdoing, or a query from the board. It may relate to something quite recent, or events that may have happened a long time ago.

Whatever the context, we know that investigations can seem overwhelming, with plenty of bear traps along the way. Sometimes it can be difficult to know where to start and what to consider. We've learned that although it may take time, it's really important to plan carefully and carry out a thorough and objective process that will stand up to scrutiny and minimise the risks to your charity.

In this guide, we'll outline some of the initial points to consider.



Robert Oakley

Partner and Head of Dispute Resolution

T: 020 7551 7792

E: r.oakley@BatesWells.co.uk



Lucinda Ellen

Associate, Dispute Resolution

T: 020 7551 7710

E: l.ellen@bateswells.co.uk

#1 Setting the scope

Start at the beginning. Think carefully about the scope of the investigation and make sure that clear terms of reference are prepared. You need to be clear about the process to be followed and the reporting lines so that anyone involved in the procedure will know what to expect.

An early step will often be to consider how your own policies and guidelines fit in with the investigation, such as your complaints or safeguarding policy. Are they sufficiently clear and robust or do they need to be supplemented? Do they follow the principles of natural justice, which require processes to be fair and reasonable, impartial and transparent?

Also think about who may need to be involved and at what stage. Do you have the person power and skills internally or might some external support be needed?



#2 Record keeping

What documents or other information are likely to be relevant?

You may need to take steps to stop routine deletion of records and ensure that any documents are stored appropriately.

Records of the decision-making process that has been followed during the investigation will be needed. The more serious the issues, the more important it is that the minutes record what the trustees considered, discussed and agreed.

But exercise caution: discussions often take place via email, by WhatsApp and other electronic means. These may be intended to be internal facing and confidential conversations, but there is a risk that they may end up undermining the process. For example, they may have to be handed over following a data subject access request. Comments made privately can be embarrassing – or even defamatory – and very damaging in the cold light of day.

There will also be a risk that documents created during the investigation could later have to be disclosed in a legal dispute and admissible as evidence in a claim against your charity. This could include informal documents, such as email traffic or other electronic communications generated during an investigation. Anyone involved in the conduct of the investigation should be mindful of these risks and appropriate measures should be put in place to reduce them.

#3 Data protection

Navigating an investigation can present a number of thorny data privacy issues. As a first step, you will need to consider your data privacy policy. Is it fit for purpose? You may also need to undertake a data protection impact assessment and consider whether you need to prepare a privacy notice that deals specifically with the collection and use of personal data in the context of the investigation. If you don't, you are unlikely to be meeting your legal obligations. There are particularly high risks when you are processing sensitive and special category personal data. If the rules are breached, an individual whose data has been processed could submit a complaint to the ICO or bring a civil claim. Under UK GDPR, failure to carry out a data protection impact assessment could leave you open to enforcement action, including a fine of up to £8.7 million. A breach also increases the risk of separate regulatory intervention.

#4 Confidentiality

Information provided by the parties and witnesses, and other documents such as communications and any final or interim reports need to be treated with care. Consideration will need to be given to whom such information is shared with. The confidentiality boundaries should be clearly understood by those involved.



#5 Reporting requirements

From the moment your organisation becomes aware of a potentially serious incident that requires investigation, you will need to consider when and how to share the information with your charity's trustees, and if and when relevant third parties should be involved. Depending on the nature of the issues you may need to get in touch with members of staff, your insurer, the local authority Designated Officer, the police, or other statutory agencies to inform them of the matter. You may also need to report the incident to a relevant regulator, for example by making a Serious Incident Report to the Charity Commission.

#6 Reputational issues

At all stages you will need to consider the possible impact of the outcome on your stakeholders and plan your communications strategy accordingly. This may mean thinking about how best to handle press enquiries in a way which balances competing interests and safeguards the charity's reputation, as well as the privacy of those involved.

#7 Professional support

There can be so many things to think about, it can often be helpful to obtain professional support at an early stage to assist in mapping out the process and ensuring that your charity does not get tripped up. Legal advice would remain confidential and subject to legal privilege and so would not need to be disclosed in a later dispute.

Get in touch



Robert Oakley

Partner and head of Dispute Resolution

T: 020 7551 7792

E: r.oakley@bateswells.co.uk



Eleonor Duhs

Partner and head of Data Privacy

T: 020 7551 7929

E: e.duhs@bateswells.co.uk



Lucinda Ellen

Associate, Dispute Resolution

T: 020 7551 7710

E: l.ellen@bateswells.co.uk





Making a profit is core to all businesses but our goal is to combine this with a real social purpose. Our values are pivotal to us, they shape our decisions and the way we live and work.

We focus on positive social impact as much as we focus on being a successful law firm. Our top tier legal advice is coupled with a real desire to drive change and we were the first UK law firm to achieve B Corp certification, awarded to businesses that balance purpose and profit.

Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

Bates Wells challenges what is possible in legal expertise delivery.

Get in touch:

+44(0)20 7551 7777

hello@bateswells.co.uk



www.bateswells.co.uk