

1. Introduction

- 1.1 If you, as an employer, have been involved in a case of suspected misconduct, you should consider the matter before making any decision to discipline the employee.

2. Procedural Issues

- 2.1 Proving the allegations requires a high standard of proof. Doubt and keeping to strict legal rules on evidence are essential. A reasonable belief of guilt based on a fair, sensible, timely investigation will suffice. Witness statements on key issues should be examined. Particular care should be taken to avoid interference where there are ongoing proceedings and where informants are involved.
- 2.2 Under the General Data Protection Regulation (GDPR), employees have the right to request access to their personal data that is held on file and, generally, the employer should be given copies of all documentation before a disciplinary hearing and given an opportunity to comment. The employer should not refuse to disclose a document if the document would reveal information about the employee, especially if this act may amount to a breach of the third party.

3. Powers to Suspend

- 3.1 If an employee is under investigation for suspected misconduct, particularly for suspended misconduct, you may wish to suspend the employee on a temporary basis. This power of suspension should be based on an express power reserved in the employment contract. A precautionary suspension should be avoided.

4. Conduct of Investigations

- 4.1 The conduct of investigations should be addressed in your disciplinary procedure. If not, the procedure will be applied by the employment tribunal which you lay down should obviously be followed.