Investigating the investigators:

The good, the bad, and the unnecessary?

Roger Kline OBE

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Contents

Roger Kline OBE is a Research Fellow at Middlesex University Business School and writes and advises on workplace culture, mainly in the NHS, some of which can be found at https://www.rogerkline.co.uk/

ABSTRACT

Formal investigations are central to how NHS employers often address workplace conflicts and allegations of misconduct. However, there has been almost no scrutiny of why (and when) they are authorised, how they are conducted, and the impact they have on staff well-being, staff behaviours, workplace culture and patient care.

The existing literature on workplace investigations shows that they may have significant implications for staff directly involved and, potentially, for the wider organisation's culture and patient care. Moreover, such investigations are regarded as crucial evidence should an individual pursue an Employment Tribunal claim.

Though there is research on what might constitute the standards for an effective and fair investigation, there is no statutory regulation of workplace investigations (or investigators), nor are there accepted standards that employers are expected to ensure investigators follow in the NHS.

This research has sought to understand the impact of NHS workplace investigations through the eyes of those subject to them. In doing so, we have sought to understand the "lifecycle of an investigation" and the key roles of influence, most notably those of investigators, both internal and externally commissioned.

METHODOLOGY

This report has employed a mixed-methods approach comprising a literature review, a survey, and in-depth interviews with subjects of investigation (primarily), investigators, commissioners, HR, lawyers, and trade union representatives.

A literature scan was undertaken using the keywords "workplace investigations" using Google Scholar. The same words were used to search for grey literature in "UK healthcare investigations".

The vast majority of results were advice, generally from lawyers and workplace consultancies, on conducting workplace investigations or academic analyses of workplace (and criminal) investigations, and the majority of these have focused on the risk of bias. A number of themes were identified from the literature.

An online survey was conducted, inviting people who have been the subject of investigations or have had some direct involvement. The survey included an invitation for respondents (n=126) to add free-text comments.

An invitation was then extended to these respondents to participate in online interviews, resulting in 65 offers; of these, 32 were selected as a representative cross-section, mainly based on workplace conflict type. Four additional interviews were conducted from responses received after the survey's closing date. Each interview, conducted via Teams, lasted approximately an hour and was transcribed; some exceeded the scheduled time by a significant amount. Interviewees were assured of their personal anonymity and of the employer's anonymity, where they had been employed during the investigation.

It was also decided not to identify the external investigators involved in many of the interviews, to prevent any access to transcripts through legal channels, and we had assured respondents of confidentiality. We do, however, refer to publicly available reports on both external investigators and NHS investigations.

We did not directly consider the role of decision-making panels in discussing investigative findings, although several interviewees addressed this. Many of the themes we identified are likely relevant to the work of such panels.

The themes emerging from our literature scan were compared with the rich evidence we collected from the survey and interviews. That in turn enabled the drafting of a Code of Practice and associated Guidance for use by employers, and those subjected to which will be published separately.

A significant caveat exists. Survey respondents and interviewees were volunteers. We cannot determine how well their experiences reflect those of more generally involved in workplace investigations within the NHS. However, extensive data and reports indicate that their experiences are not unusual and are consistent with the findings of the literature scan. We are also unable to verify the accuracy of all reported information. However, volunteers provided extensive documents to corroborate their interview accounts, and we are satisfied that the accounts were authentic.

A second caveat is that job titles have been changed (though not significantly) for some quotes where it might be possible to identify the author.

A summary of the survey is available here.

EXECUTIVE SUMMARY

This report investigates the practice and impact of workplace investigations within the NHS, focusing on their necessity, conduct, and consequences for staff wellbeing, organisational culture, and patient care. The report highlights a significant gap between best practice as suggested by research and the reality experienced by NHS staff, with evidence that investigations themselves are often perceived as punitive.

The report employed a mixed-methods approach:

- **Literature scan:** A literature scan using "workplace investigations" as a keyword, focused on both academic literature and grey literature, especially within UK healthcare. Most grey literature consisted of practical guides from lawyers and consultancies, whereas academic work highlighted bias and procedural shortcomings.
- **Survey:** An online survey targeted individuals who had been subjects of investigations or had direct involvement, yielding 126 responses. Respondents could provide free-text comments.
- **Interviews:** 36 in-depth interviews were conducted with a representative cross-section of NHS staff, including those investigated, investigators, commissioners, HR professionals, lawyers and trade union representatives. Interviews were anonymised and transcribed, with confidentiality assured.

Key Themes from the Literature Scan

Lack of Scrutiny and Standards

- There is no statutory regulation of workplace investigations or investigators in the NHS, nor are there accepted standards that employers must follow. This regulatory gap has led to inconsistent practices and a lack of accountability (Ballard & Easteal, 2018).

Poor Practice and Bias

- Robert Francis QC's *Speaking Up Review* (2015) identified "poor practice" in whistleblowing cases, including failure to investigate, biased investigations, lack of transparency, and poor communication.
- The Kirkup Review of Liverpool Community Health Trust (2018) found that incident reporting was discouraged, investigations were poor, and action for improvement was absent (Kirkup, 2019).
- Literature from UK reviews of disciplinary practices and the responses to staff raising concerns overwhelmingly reported similar evidence.

Weaponisation of Investigations

- Kenny et al. (2019) describe how investigations can be weaponised, used as tools of retaliation and harassment, particularly against whistleblowers. Whistleblowers often face mental harm, isolation, and career detriment as a result of investigations (Grant Thornton, 2024).

Impact on Staff Wellbeing and Culture

- Investigations can cause significant psychosocial harm, including anxiety, depression, and trauma (Hussain, 2022; Jones et al., 2023). The process often leads to isolation, alienation, and undermining of professional identity.
- The NHS National Staff Survey (2024) found that only 61.8% of staff feel safe to speak up, and less than half are confident their concerns will be addressed.

Discrimination and Bias

- Discrimination, especially against race and disability, remains a serious challenge. Black and Minority Ethnic (BME) staff are disproportionately affected by disciplinary processes (NHSE, 2025a). The Employment Tribunal in the case of Richard Hastings v King's College Hospital NHS Foundation Trust (2016) found that the investigation was tainted by unconscious bias and failed to investigate allegations of race discrimination properly.

- The case of Amin Abdullah, who died by suicide after a flawed investigation, led to an independent review that highlighted leading questions, lack of impartiality, and serious professional failings (Verita, 2019).

Collusion and Conflicts of Interest

- Collusion between witnesses and management has been identified in several cases, such as Dr Susan Gilby v Countess of Chester NHS Foundation Trust, where the Tribunal found a conspiracy among Board members to drive out the CEO after protected disclosures.

Financial and Economic Costs

- Investigations are costly, with legal fees, consultancy costs, and in-house expenses often reaching tens of thousands of pounds per case (Kline & Lewis, 2018). The economic impact extends beyond legal costs to include absenteeism, presenteeism, and lost productivity.

Notable Cases and Judicial Criticism

- **Amin Abdullah (Verita, 2019):** The independent review found the investigation was flawed, with closed and leading questions, a lack of impartiality, and serious professional failings.
- **Richard Hastings v Kings College Hospital NHS Foundation Trust (2016):** The Tribunal found the investigation was conducted with unconscious bias, failed to investigate race discrimination, and treated the claimant as guilty from the outset.
- **Dr Susan Gilby v Countess of Chester NHS Foundation Trust:** Ibex Gale was commissioned by the Trust to investigate concerns raised by Dr Gilby under the bullying and harassment policy. While the Trust praised the report by Ibex Gale, the Employment Tribunal did not accept that the investigation identified the real issues. It rejected the investigation report and much of the other evidence presented by the Trust. It unanimously found that Dr Gilby had been the victim of a conspiracy to remove her from office.
- **Eva Michalak v Mid Yorkshire Hospitals NHS Trust (2007):** Senior doctors conspired to make complaints based on nationality and pregnancy, leading to findings of sex and race discrimination. Similarly, in **Elliott Browne v Central Manchester University Hospitals NHS Foundation Trust (2012),** the investigation failed to acknowledge that senior managers had conspired against a very senior scientist with an impeccable work record. In both cases, Employment Tribunals were highly critical of all aspects of the internal proceedings.
- **Laura Yanda Hindle v Nursing and Midwifery Council (2025):** The High Court found collusion among witnesses against a nurse, with the NMC failing to address the issue.
- **Michelle Cox vs NHS Commissioning Board (2023)** and **Samira Shaikl vs Moorfields Eye Hospital NHS Foundation Trust** were both examples of investigations that failed a basic test in concluding the behaviour complained of was “poor management behaviour” rather than, as Tribunals decided, acts of race discrimination.
- **Ms C O’Brien v Cheshire and Wirral Partnership NHS Foundation Trust (2025):** The Tribunal found that delays in raising misconduct concerns can make a dismissal unfair if the delay prevents proper defence.
- **Clive Rennie v NHS Norfolk and Waveney Integrated Care Board (2024):** Capsticks LLP represented the ICB in the Employment Tribunal. This case involved documents that were claimed not to exist, despite evidence to the contrary. Capstick’s attempt to have the judge recuse himself was rejected by the Tribunal and described by the judge as “perhaps a cynical attempt to hijack proceedings and delay further progress”.

Overview of Primary Research

Investigation Process Concerns

- It was frequently unclear why informal resolution was not possible, rather than a prolonged formal investigation
- Widespread dissatisfaction with both internal and external investigations, citing lack of impartiality, poor communication, and predetermined outcomes.
- Terms of reference were often vague, changed mid-process, or skewed to favour management.
- Witnesses suggested by subjects were frequently not interviewed, and access to evidence was restricted.
- Report findings were often felt not to flow from the evidence, and there was very little evidence of learning for the organisation

Bias and Discrimination

- Allegations of discrimination (race, disability) and bias were common, with investigators often lacking expertise in equality, diversity, and inclusion.
- Investigations into discrimination frequently failed to apply the correct legal standards, focusing on direct overt evidence rather than patterns or impact from covert discrimination.

Impact on Wellbeing

- Many participants reported significant negative effects on mental health, career progression, and trust in both the process and their employer.
- Suspension and transfers were often experienced as punitive and isolating, with prolonged investigations exacerbating harm.

Weaponisation and Retaliation

- Investigations themselves were experienced as a form of punishment.
- Few organisations took formal steps to prevent retaliation, and whistleblowers often faced further detriment.

Quality and Independence of Investigations

- Both internal and external investigations faced challenges regarding independence and bias.
- External investigators were often perceived as influenced by contractual relationships, while internal investigations suffered from resource constraints and internal politics.

Recommendations for Improvement

- Emphasise informal early discussions and avoid formal investigations unless necessary.
- Develop a national code of practice for NHS workplace investigations with independent oversight and expertise for investigations
- Mandate training in cultural awareness and anti-discrimination for investigators, HR, and managers.
- Ensure all possible steps are taken to prevent the investigation itself from being a source of punishment (whether intended or not)
- Ensure retaliation for staff raising concerns is addressed as gross misconduct
- Ensure timely access to all relevant data
- Improve employer support for staff and union accountability

A summary of the survey is available at: https://www.rogerkline.co.uk/investigating-the-investigators.

LITERATURE SCAN

The NHS context

In his 2015 *Speaking Up Review*, Robert Francis QC listed several principles of "Poor Practice" he found in whistleblowing cases, including:

- concerns not acknowledged,
- failure to investigate and act,
- "biased" investigations,
- lack of transparency and openness, and
- poor communication.
- Francis R (2015)

There are numerous NHS examples before and since then:

- The Kirkup review of Liverpool Community Health Trust (2018) noted that "[incident] reporting was discouraged, investigation was poor, incidents were regularly downgraded in importance, and action for improvement was absent or invisible". Kirkup W (2019)
- In the case of **Amin Abdullah,** who died by suicide, after an utterly flawed investigation, the subsequent independent review concluded that "Many of the Investigating Officer's initial interview questions were closed and leading….(and) "casts doubt on her ability to judge Nurse Abdullah's case honestly and therefore the reliability of the entire investigation" and "raises serious issues about her professional judgement." (Verita (2019))

In a landmark case costing the NHS £1 million in damages for a dismissed Black IT manager, **Richard Hastings**, the Employment Tribunal commented on the investigator:

> *"We concluded that Mr Yousuf's evidence was not credible on a number of occasions" (Para 365)*
>
> *"Turning to the next issue of whether the investigation conducted and the conclusions reached by Mr Yousuf were less favourable treatment because of race, we conclude that they were. Mr Yousuf impressed upon the Tribunal his 17 years' experience as a police officer in conducting investigations and with evidence handling, but the conduct of the investigation showed unconscious bias. (Para 373)*
>
> *"He (the Trust's investigator) professed to be sceptical about the Claimant's evidence that he was subjected to race discrimination and did not investigate. His failure to investigate was in breach of the Respondent's policies as referred to above and in breach of the EHRC Code of Practice. There has been no explanation from any of the Respondent's witnesses as to why they failed to comply with their policies despite three HR managers having involvement throughout" (Para 374)*
>
> *"We also found as a fact that the investigation was conducted like an interrogation of the Claimant rather than an attempt for him to tell his side of the story" (Para 375) (Case: Mr R Hastings).*

Research has identified specific concerns about NHS workplace investigations, notably when whistleblowers raise concerns (Francis R, 2015) or when Black and Minority Ethnic staff raise concerns (Kline R, Warmington J, 2024). There is extensive recent research exploring the workplace conflicts most commonly raised in our research. These include whistleblowing (Jones A et al (2022)), workplace unprofessional behaviours (Maben J et al (2022)) incivility (Riskin. A et al (2019)), race discrimination (Kline R, Warmington J sexual misconduct (Begeny C et al (2023) and patient safety (Chaffer, D., Kline, R. and Woodward, S. (2019)). In parallel, formal inquiries have identified risks to patient care arising from poor workplace culture. (Kennedy, I. (2001)); (Francis, 2013); Kirkup, W (2023).

The NHS is dependent on staff of Black and Minority Ethnic heritage (28% of the workforce). However, whilst there is extensive evidence of their experience in raising concerns or being disciplined, there is very little analysis of the experience of internationally trained NHS staff. Atewologun D, Kline R (2019) considered why internationally trained doctors were disproportionally referred to the General Medical Council. During COVID, there were multiple reports of internationally trained staff being reluctant to raise concerns. Nursing Standard (2023), for example, reported that "Fear of repercussions stops overseas nurses raising concerns at work" and that worries over loss of income and visa renewal deterred international nurses.

Investigations and NHS employment relations

Within the NHS, there are differing approaches to workforce investigations, reflecting varying perspectives on workforce culture and employment relations. Collective bargaining has declined significantly in recent decades across UK workplaces as a means of resolving disputes, and the law now plays a much greater role in employment relations. That, in turn, has influenced the behaviours of employers and trade unions, which are now more influenced by a range of statutory individual rights enforceable through the employment tribunal system (Colling T (2009); Wood, S., Saundry, R. and Latreille, P. (2017)).

Although social partnership arrangements between unions and management exist across the NHS, recent declines in the number of local trade union representatives and the rise of roles such as Freedom to Speak Up Guardians and staff networks have affected how and where many staff raise concerns or seek support.

Employers have developed more comprehensive local policies and procedures. However, these were primarily designed to align with their legal responsibilities, particularly with respect to grievances, raising concerns, discrimination, and bullying and harassment. This response to the UK employment legislation's focus on individual employees has, in turn, driven a shift towards methodological individualism, in which employers prioritise addressing individual concerns rather than preventive and proactive strategies.

Two approaches to investigations

The Mid Staffordshire NHS Trust scandal report (Francis, 2013) and his subsequent Freedom to Speak Up report (Francis, 2015) both demonstrated that toxic cultures were prevalent in many parts of the NHS, with adverse consequences for patient care and staff well-being. These deterred staff from raising concerns about both patient care and staff behaviours, a problem compounded by the emphasis in national and local policies on enabling individual staff to raise concerns rather than adopting a proactive, preventative, data-driven strategy. As Robert Francis (2015) put it:

> *"The number of people who wrote to the Review who reported victimisation or fear of speaking up has no place in a well-run, humane and patient-centred service. In our trust survey, more than 30% of those who raised a concern reported feeling unsafe afterwards. Of those who had not raised a concern, 18% expressed a lack of trust in the system as a reason, and 15% blamed fear of victimisation. This is unacceptable. Each time someone is deterred from speaking up, an opportunity to improve patient safety is missed."*

National NHS strategies on employment relations, such as the NHS Workforce Plan (NHSE, 2021), have framed the workforce as a strategic asset, highlighting correlations between workforce treatment and better outcomes for staff, employers and patients. In recent years, HR professionals in the NHS have delegated much operational responsibility to line management. However, workload pressures and organisational turmoil have meant that line managers' capacity and skills often fall short of those required to implement these devolved HR responsibilities. That applies to the handling of workplace conflicts.

However, research suggests managers may resent the time and bureaucracy involved in HR procedures and as obstacles to their immediate goal, and may lack confidence to conduct informal investigations – especially where there might be litigation (CIPD (2023)).

A similar theme emerged in research on how managers handle HR initiatives linked to diversity or where protected characteristics might be a factor (Dobbin, F, Schrage, D. and Kalev, A. (2016)). The CIPD (2020) found:

> *"a continued reliance on formal processes and procedures to resolve conflict, as well as a gap in how well **employers and people managers** think they deal with conflict, compared with the experiences of **employees** who've been on the receiving end of it. (and that), people managers are just as likely to exacerbate a conflict situation as they are to resolve it. This conflict can, if unaddressed, fester to the point at which the formal disciplinary route appears to be the most reasonable course of action."*

Presumably, in part in recognition of this, Saundry R et al (2019) reported that HR use policy and procedure to shape management compliance – not fairness – and this is reflected in the focus on procedure in their training. Ones, C. and Saundry, R. (2012) described how the distinctive functions of operational managers and HR practitioners may interact and shape the nature and outcomes of disciplinary procedures and processes. Saundry R et al. (2024) reported that over the last two decades, a policy consensus has developed that underscores the importance of encouraging organisations and their managers to address workplace conflict at the earliest possible stage and to resolve problems through informal discussion where possible.

Saundry R, Urwin O et al. (2021) highlighted the cost and efficiency benefits of early conflict resolution. They found that the primary reason for adopting formal processes is to avoid litigation risk, but that the costs of dismissals and resignations dwarf those of litigation, and that the critical time to intervene is before the process becomes formal.

Within the NHS, there are differences in workforce culture and employment relations. A growing understanding of the importance of healthcare workforce culture in the last two decades (West M (2021)) has led to several management initiatives that recognise the workplace environment's significant impact on their effectiveness, productivity, safety, and the influence of workforce culture on patient safety, as well as on care, staff wellbeing, and productivity.

One employer, Mersey Care NHS Foundation Trust, pioneered an approach with notable sector influence, promoting a "just and learning" culture rather than the retributive one that had developed within their organisation (and elsewhere). Analysis of the Trust's disciplinary cases had revealed a high volume of investigations, with over 50% resulting in no case to answer. Consequently, focus was placed on the early stages of the process, particularly on how the Trust determined whether an investigation was necessary. This was likely one of the key factors in reducing cases, as it encouraged those responsible for making decisions to ensure they obtained and considered the appropriate information before initiating formal proceedings, with their rationale clearly documented.

This approach demonstrated that addressing poor staff behaviours and patient care by focusing on learning rather than blame, and by using early informal resolution wherever possible, had clinical, employment, and financial benefits. Research indicates that the introduction of restorative practices has been associated with numerous qualitative improvements among staff. The report estimated that restorative justice yields approximately 1% of total costs and about 2% of the Trust's labour costs. (Kaur M et al. (2019)).

The Mersey Care strategy was informed by decades of research in human factors, sociology, psychology, cognitive systems engineering, and related disciplines. It reflects the development and balance of both restorative practices and accountability, in which people are seen as the solution to harness, not the problem to blame (Woodward et al, Being Fair (2018))**.** Supporting a Just and Learning culture for staff and patients following incidents in the NHS requires leaders to model behaviours that create and maintain a safe,

supportive, learning environment for both patients and staff. Implicit in this approach is the understanding that if blame is the goal, any investigation will focus on "who did it" rather than learning how to prevent a similar incident. The approach has parallels with the *Safety Incident Response Framework* (NHSE, 2022), a significant shift in how the NHS responds to patient safety incidents, with a greater focus on understanding how incidents occur, including the factors that contribute to them.

Two influences on this approach that may overlap with the "just and learning" culture are worth noting. The first was the growing use of a behavioural nudge, in the form of a triage system, which interrupted the default move to a formal investigation by asking (or requiring) line managers to explain why a formal investigation (rather than an informal resolution) was appropriate.

The second influence followed the catastrophic suicide of NHS nurse Amin Abdullah following a flawed investigation, which led to NHS Improvement asking all NHS employers to ensure that in all disciplinary cases, NHS Trusts review the following questions and, where necessary, take corrective action in response:

- Is there sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action?
- Considering the circumstances, in the eyes of your organisation and others external to it, would the application of a formal procedure represent a proportionate and justifiable response (i.e. have other potential responses and remedies, short of formal intervention, been fully assessed before being discounted)?
- If formal action is being taken or has been taken, how will appropriate resources be allocated and maintained to ensure it is conducted fairly and efficiently? How are you ensuring independence and objectivity at every stage of the process?
- What will be the likely impact on the health and wellbeing of the individual(s) concerned and on their respective teams and services, and what immediate and ongoing direct support will be provided to them?
- Further, how will you ensure the dignity of the individual(s) is respected at all times and in all communications, and that your duty of care is not compromised in any way, at any stage?
- For any current case that is concluding, where a sanction may be applied, are similar questions being considered?" (NHS Improvement, 2019)

The letter ended by setting out how this should be embedded, including through Board-level oversight:

> "Mechanisms should be established by which comprehensive data relating to investigation and disciplinary procedures is collated, recorded, and regularly and openly reported at board level. Associated data collation and reporting should include, for example, the number of procedures; reasons for those procedures; adherence to the process; justification for any suspensions/exclusions; decision-making relating to outcomes; impact on patient care and employees; and lessons learnt.

This approach challenged the primary reliance of many NHS organisations on policies, procedures, and training to regulate staff behaviour, which, in turn, was a response to the growing role of legislation in employment relations. The "just and learning" culture of the Mersey Care example thus complemented more exhaustive research showing there was no evidence that, in isolation, such methodological individualism could improve culture (Kline, 2023).

The use of legally driven, individually focused formal investigations, rather than early, informal, proactive resolution, was increasingly reported to harm staff, emphasise blame rather than learning, and be costly. At the same time, research repeatedly found that staff were reluctant to raise concerns because they felt doing so was either pointless or could make matters worse for the person raising them. (National Guardian Office (2024)).

However, Saundry et al. (2016) questioned the extent to which the aspiration of early and informal resolution was reflected in the reality of most UK organisations. In contrast, they suggested:

> *"Evidence suggests that formalised approaches to discipline and grievance remain well embedded in organisational practice, driven, in part, by concerns over risk and legal compliance. Reliance on procedure and process also reflects a well-documented deficit in managerial conflict confidence".*

The number of NHS disciplinary cases shows a considerable recent overall improvement. In 2016, BME staff were 1.54 times more likely to undergo disciplinary action than White staff. By 2024, this disparity had decreased to 1.08 times. Additionally, the total number of staff (both BME and White) involved in disciplinary processes in the NHS fell from 17,702 to 7,797 (NHSE, 2025).

Research on the effectiveness of internal investigations is limited. Cases successfully managed are usually handled informally in-house, remain unreported, and issues are more likely to be addressed before the problem escalates. However, previous research has identified procedural barriers to effective employee investigation processes, including breaching the employer's own policies and procedures (Archibong et al., 2019) and extended delays in investigations or associated processes (Cooper et al., 2024).

The weaponisation of investigations?

Workplace investigations (whether the process or the outcome) can be associated with employer retaliation and harassment (Kenny, 2019).

> *"Whistleblowers are retaliated against because of their disclosures, which harms their mental health and well-being, and they are then seen as unreliable and untrustworthy outcasts because of the suffering that the wrongdoing organisations inflicted upon them in the first place".*

Reports produced as a result of investigations are rarely provided to subjects of investigation at an early stage or in full, thereby further disadvantaging them. These investigations are rarely scrutinised externally, except by a court, so staff involved are reliant on an internal panel to determine their fate, effectively in private, and find themselves at the investigation stage with fewer rights than suspects in police investigations.

Another challenge to fair and effective investigations is the individualisation of each case. Matsson A Jordan T (2021) emphasise the importance of identifying the causes of bullying, such as work environment factors, rather than attributing it solely to individual factors. This approach is also applicable to issues like patient safety and discrimination.

This approach has two consequences. Emphasising the individual specifics of the case without recognising the organisational context may lead to an unjust outcome because many of the issues that cause workplace conflicts requiring investigations cannot be adequately (or fairly) understood without considering the context in which the acts or omissions being investigated took place. For example, an allegation of discrimination may consist of a series of detriments that, although it is not possible to demonstrate that discrimination has occurred, indicate cumulative detriment for which there is no credible explanation. In such cases, a Tribunal would (and an employer should) consider that this may shift the burden of proof, so that the alleged perpetrator must demonstrate that discrimination has not occurred, rather than the complainant proving it. That is something an investigator would be expected to be alert to, and a Tribunal should be (Case Ms A Cox).

There is a second potential flaw that Employment Tribunals are increasingly aware of (and local employers should recognise). This occurs when contextual data suggests that an individual complaint may gain credibility, particularly when, for example, sexual misconduct or race discrimination is widely reported, especially if there is no evidence of preventative curiosity or action being triggered. For instance, if an allegation claims that disciplinary action is an act of racial discrimination, data indicating that BME staff are more likely to be

disciplined than White staff might lend support to the allegation in the absence of a credible explanation. (Case: Mr R Hastings).

Research has begun to go beyond ensuring fairness and mitigating bias by scrutinising the extent to which the investigation itself may constitute punishment for those subjected to it. Kuldova et al (2023) found in their research into investigations in Norway:

> *"Workplace investigations escalated conflicts, negatively affecting whistleblowers, trade union representatives, safety representatives, and other critical and dissenting voices, and these systems leave little room for trade union representatives, co-determination or collective approaches to conflict resolution. We argue that this cannot be merely attributed to botched or biased investigations that have failed to follow 'best practice' guidelines. Instead, these are, by default, inquisitorial processes: the employer funds the investigation, issues the mandate, and acts as prosecutor, police, and judge in one. Workplace investigations, the epistemic power of managerialism and the hollowing out of the Norwegian model of co-determination."*

Delays in the commissioning, handling, reporting, and acting on investigations are reported by research to be a key factor undermining them. Employment Tribunals are recognising these risks and unfair hearings, and in one NHS case regarding misconduct, where the ET concluded that a delay in raising misconduct concerns with an employee may make a dismissal unfair if the delay prevents them from adequately defending themselves. (Case: Ms C O'Brien).

A UK government-commissioned independent review of whistleblowing. (Grant Thornton (2024)) found a wealth of similar evidence of whistleblower experience:

- **Imbalance of power in** money, knowledge, and skills compared to employers, exacerbated by Employment Tribunal delays and time limits, which they lacked expertise in. It was further compounded by obstacles to accessing evidence and challenges posed by non-disclosure agreements;
- **Investigations.** Many whistleblowers had no confidence that investigations commissioned by their employers would be independent or that Employment Tribunals would be fair;
- **Mental harm**. The impact of raising concerns was draining, stressful and required sustained resilience;
- **Proving their case.** Proving that the detriment suffered was directly related to their disclosure was extremely challenging;
- **Regulators** were found to be of little assistance;
- **Victimisation.** They found little or no protection against victimisation.

The authors noted that a mix of academic and stakeholder literature found internal reporting routes can be ineffective for several reasons:

- internal reporting may not be safe or supportive, as whistleblowers may face reprisals, isolation, cover-ups or indifference from their managers or colleagues, and this dissuades potential reporters from raising concerns;
- internal reporting may not be responsive or corrective, as whistleblowers may not receive feedback, acknowledgement, or perceive that remedies for the wrongdoing have been undertaken, again creating a confidence crisis for individuals considering raising concerns
- according to stakeholder and academic literature, an organisation may have an incentive to conceal or downplay a concern that could damage its reputation, access to resources or funding, profitability, or contractual obligations, rather than address it transparently and effectively;
- literature suggested that there is a lack of independence or oversight of how management responds to concerns raised by workers, especially if the concern implicates senior managers or executives;
- some workers may face retaliation or victimisation from their managers or colleagues, who may perceive them as disloyal, a troublemaker, or a threat.

Whistleblower participants they interviewed perceived that organisations do not adequately respond to concerns raised, and instead did one or more of the following:

- actively seeking to cover up or bury the wrongdoing;
- not investigating or not investigating properly with disclosures allegedly ignored, original concerns completely lost, and a lack of an investigation (or an inadequate or "sham" investigation) undertaken;
- not taking appropriate action in response to investigation findings;
- retaliating against the individual, i.e. "going on the attack".

Unsurprisingly, many whistleblowers interviewed reported that they would not raise concerns again because of their experiences.

Investigations: the case of NHS professional regulators

One consequence of employer investigations may be a referral to a healthcare professional regulator. In November 2019, Prerana Issar, then NHS Chief People Officer, wrote to all Healthcare Professional Bodies and Regulatory Bodies requesting that:

> *'Healthcare regulatory and professional bodies should consider reviewing their respective guidance and standards issued to their registrants, which relate to the management and conduct of local investigations and disciplinary procedures, to ensure fairness, consistency and alignment'.* NHS Improvement (2019a)

The NMC process, in particular, has faced repeated criticism for its extraordinary duration and the amateurish aspects of specific procedures. There have also been several high-profile cases in which registrants have been inadequately supported by both the NMC and their own employers, often acting together with the NMC, which has been reluctant to learn and has adopted a defensive stance. Thirty-three nurses and midwives committed suicide between 2015 and 2024 while involved in the Nursing and Midwifery Council Fitness to Practice process. (Chambers C (2025).

In a case lasting several years, health visitor Michelle Russell made an allegation (eventually validated) of sexual misconduct. She was then subjected to an investigation and disciplinary process, resulting in the loss of her career and NMC registration. Another investigation then completely overturned the original one and, belatedly, prompted an apology from the Trust, though there was no evidence of learning from the NMC (Kituno, 2019). A culture of leadership defensiveness has seriously damaged both NMC employees and registrants, as repeated Inquiries have demonstrated (Rise Associates, 2024). They also continue to victimise staff who raise concerns. In fact, the case of the NMC whistleblower whose protected disclosures contributed to the RISE report remains systematically contested by the NMC.

In respect of the medical profession, an independent report to the General Medical Council (2015) concluded:

- There is considerable evidence that, in the workplace, persons who raise concerns about a danger, risk, malpractice or wrongdoing that affects others may well suffer, or believe that they will suffer, reprisals at the hands of an employer or fellow workers.
- Failure to conduct an independent investigation into the validity of the concerns raised may well indicate an unwillingness to take the concern seriously**.**
- The key to minimising the risk that the GMC unwittingly becomes the instrument of the employer in a campaign against a doctor is an understanding of the background to the allegation. In the words of Sir Robert Franncisin, paragraph 80 of the Executive Summary to his 2015 Report:

"It is important that professional regulators are aware of the context in which a referral for investigation of a medical professional is made, to ascertain whether there is any risk that it is a retaliatory referral. I am

not suggesting that there should be no investigation because someone has been a whistleblower: there may be a perfectly good justification for doing so. However, the regulators need to assure themselves that the referral is fair." Sir Anthony Hooper (2015)

The GMC Fitness to Practice process is greatly influenced by Maintaining High Professional Standards in the modern HPSS (MHPS (2005)), which is "guidance on processes to use where there are serious concerns involving conduct, clinical performance and health of dental and medical employees". Its stated aim includes enabling employing bodies:

"to handle cases quickly and fairly; reducing the need to use disciplinary procedures to resolve problems; tackling the blame culture – recognising that most failures in standards of care are caused by systems' weaknesses, not individuals".

Concerns around the process have includes how it is misused by some employers – either in its use or the threat of its use, A critical report Hospital investigatory proceedings against doctors in England: A case for a change (no date) some years ago argued that "fairness, bias, and discrimination are still highly prevalent in the disciplinary proceedings that NHS doctors are subject to, despite repeated improvement measures, recommendations, and reports".

Every NHS Trust, under MHPS, has discretion over the precise protocols and procedures it has in place for conducting a disciplinary involving a doctor. This variability means each Trust has individual policies with their own nuances and potential risks. The Medical Protection Society (2024) surveyed doctors (n=81) of whom:

- 53% said that the disciplinary investigation against them lasted over 1 year. 22% said the process was over 2 years.
- 80% said the disciplinary investigation had a detrimental impact on their mental health, with 44% said that they experienced suicidal thoughts during the investigation.

NHS England is the overall regulator for the NHS and its approach to matters such as whistleblowing and discrimination. Its approach to whistleblowing (reliant heavily on policies, procedures and training) has been repeatedly criticised for failing to protect staff who raise concerns, as the National Guardian Office (2024) has reported. Its approach to discrimination – notably race discrimination and sexual misconduct - has been ineffective according to its own data and reports.

The **Care Quality Commission (CQC)** is the quality regulator for health and social care. A large number of staff raise concerns with the CQC every year, both about patient safety and staff behaviours. The CQC does report on workplace culture within its reporting system, but there has been little attention paid to how concerns are investigated and criticism that even when aspects of poor culture are demonstrably poor (such as racism), they do not necessarily lead to a change in the provider's "well-led rating".

The investigator

Our literature scan revealed an almost complete lack of scrutiny of the roles of internal workplace investigators across UK employment, and none about the growing industry of external investigators.

Workplace investigations are widely presented as an independent, quasi-legal means of handling complaints and as an impartial method for addressing grievances. Research has primarily focused on reducing bias in the process and enhancing investigators' competence. (Ballard, A Easteal, P. (2018)) Whilst Hoel H, Einarsen S (2020) examine how a lack of fairness, neutrality, and timeliness can flaw the process.

Mattson and Jordan (2021) argue that investigations of bullying allegations, for example, must consider the organisational context in which the alleged acts or omissions occurred. That has implications for the skill set required of investigators, who should regard bullying as a complex phenomenon, requiring awareness of the workplace environment, communication, conflicts, leadership, power, social justice, ethics, and how organisations function. The search for facts about an individual or an incident may be misleading.

We found no research on whether the investigator's ethnicity or gender affects the effectiveness of investigative outcomes. We did note that, in the race discrimination cases, a BME investigator was not necessarily more likely that a White one to undertake a fair and effective investigation (Cases: Mrs A Cox and Mr R Hastings).

Pressures and potential conflicts for investigators

Personal allegiance to the organisation or to individuals may influence decisions (Murrie D, et al (2022)). Where investigators are employees of the organisation in which they conduct investigations, this may create a motivation (often unconscious) for the investigator to prefer reasons for the event that emphasise independent employee actions rather than organisational factors. Internal investigators, who are likely to be managers under significant workload and time pressures, may find it difficult to prioritise investigation decision-making.

Conversely, external investigators may be biased due to the inherent tension between professional independence and the financial imperative to satisfy the client's needs. Furthermore, if an organisation repeatedly employs the same one or two external investigators, these investigators may face similar biases as internal personnel, including dependence on the organisation and ongoing relationships that could affect their livelihood. The absence of any statutory or NHS regulation of either investigators or investigations provides no guardrails on such risks. The literature scan revealed no research on external workplace conflict investigation consultancies within the UK, and certainly not in the NHS.

What standards should workplace investigations meet?

The Acas statutory Code of Practice on discipline and grievance (n.d.) procedures provides guidance to employers and their representatives, setting out principles for handling disciplinary and grievance situations in the workplace. A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. The Code of Practice sets out almost no guidance on how to establish the facts of each case simply, drawing on its own research (Saundry et al (2024)) and stating:

> *"Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve an issue. However, where an issue cannot be resolved informally, then it may be pursued formally".*

Though there are some issue-specific guidance, such as the Health and Safety Executive's *Workbook for employers, unions, safety representatives and safety professionals* (2994) there is no statutory Code of Guidance for workplace conflict investigations nor any NHS-specific Code, though that might be something this research prompts.

Shortcomings in NHS investigations

In *NHS 24 v Pillar UKEATS/0005/16/JW*, the Employment Appeal Tribunal helpfully set out the practices that may take an investigation outside the range of reasonable responses by an employer could include:

- a failure to challenge blatant untruths or glaring inconsistencies;
- a deliberate pursuit of evidence in support of one party's case rather than the others, or any other sign of over-bias or favouritism on the part of the investigator;
- the rejection of seemingly cogent evidence without explanation;
- the inclusion of material which is clearly prejudicial to a party but not even arguably relevant to the facts being investigated;
- not looking into or reaching conclusions on key allegations or not talking to clearly relevant witnesses (although it may not be possible to avoid this in small businesses or at senior management levels), having the investigation carried out by someone criticised or incriminated by the employee whose conduct is the subject of the enquiry;
- not concluding the investigation within a reasonable period of time – this does not require speed above substance, but it would certainly be best to avoid long gaps in the process where nothing is seen to be happening;
- referring to information which the employee had previously been told expressly would not be relied on in future, for example, a warning which the employee had been told would be removed from his/her file on expiry.
- confusion between the role of the investigator and that of the manager making the dismissal decision.

NHS Improvement (2019b) set out key questions for all NHS Trusts from disciplinary situations: The guidance to employers arose from the scandal following the 2015 investigation and then suicide of nurse Amin Abdullah (Verita (2019))), NHSi then outlined several key themes from arising from that case, which identified shortcomings that were also common to other historical cases considered. Principal among these were:

- poor framing of concerns and allegations;
- inconsistency in the fair and practical application of local policies and procedures;
- lack of adherence to best practice guidance;
- variation in the quality of investigations;
- shortcomings in the management of conflicts of interest;
- insufficient consideration and support of the health and well-being of individuals; and
- an over-reliance on the immediate application of formal procedures, rather than consideration of alternative responses to concerns.

Concerns about bias

> *"I will look at any additional evidence to confirm the opinion to which I have already come", Lord Molson. British politician (1903-1991)*

Cognitive bias is the human tendency to make systematic errors due to cognitive factors rather than evidence, arising from information-processing shortcuts called heuristics. Such unconscious biases are likely to impact the most important functions of workplace investigators, including

- the evaluation of witnesses and evidence
- the assessment of behaviour
- the recollection of facts, and
- the judgment of wrongdoing.

Investigators (and indeed hearing panels) may reach conclusions by following cognitive biases of which they may be unaware, rather than based on objective evidence. Since biases can undermine every stage of an

investigation, one must make conscious efforts to mitigate them. These biases are not confined to workplace investigations of discrimination claims; they may also affect such investigations, even when investigators believe their own beliefs are contrary to the evidence of discrimination (Greenwald, A., & Krieger, L., 2006).

Once developed, stereotypes about particular groups of people become self-perpetuating despite evidence to the contrary. Such stereotypes can shape expectations about what a person may be like and affect interview outcomes (Oppenheimer, A. (2012)).

An investigator may be convinced they are absolutely fair-minded and unbiased, but research has shown that even those who actively endorse egalitarian values harbour unconscious biases. Social scientists have demonstrated how even those who actively endorse egalitarian values harbour unconscious biases (Richardson, LS, 2017). Expertise, rather than insulating us from biases, can actually create them through learned selective attention or reliance on expectations based on past experiences. (Dror I (2020)).

Bias is ubiquitous and affects decisions at every stage of an investigation. Examples include:

- Having an early hypothesis about guilt leads to bias (*O'Brien, B. (2009));*
- Context affects judgements. Extensive evidence demonstrates the importance of context in making judgements, much of it from forensic and court decision-making. Dror E, (2006); Rassin E (2020);
- Credibility. "*There is little support for the long-standing assumption that judges and jurors can accurately assess credibility….intuitive evaluations of trustworthiness based on the face may strongly bias the interpretation of subsequent information about a target".* Gustaw C (2010);
- Personal background can influence methodology and may be affected by educational background (Svenson O et al., 1999).

The influence of both context and personal characteristics is compounded by the fact that information in workplace investigations is often ambiguous and incomplete. Information-poor environments afford greater opportunities for sources of bias to affect an investigator's understanding of "the facts." Even how questions are answered depends on how they are asked (Loftus E (1975)). Overcoming biases and stereotypes requires significant effort. To do so, we have to be able to recognise a stereotype when it is activated and be motivated to control its activation and influence.

Bias and protected characteristics in investigations

Stereotypes and biases are certainly not limited to racial features, but when racial stereotypes and biases are triggered, they can significantly influence our thoughts and actions. Negative stereotypes against individuals from minority groups can significantly affect how people behave towards members of these groups. These negative stereotypes often activate automatically when individuals encounter members of stigmatised groups, potentially affecting their decisions—even if they do not want to be influenced by such stereotypes (Greenwald, A. & Banaji, M., 1995). Investigators may reach conclusions not based on seemingly strong objective evidence, but instead by unwittingly following cognitive biases of which they are often unaware.

Common types of bias in investigation when race may be a factor

For Black and Minority Ethnic staff in particular, the frequent application of rules based on arbitrary judgment and a lack of cultural competence or awareness among managers contributed to low levels of perceived support during disciplinary processes (Archibong et al, 2019, op cit)

Affinity Bias can directly affect how we interact with a complainant or with a witness. The more we connect with an interviewee, the more comfortable we are. Consequently, we may be more inclined to view them as

honest and consider their statements credible and may also spend more time talking to them because doing so is natural and easy (and vice versa).

Confirmation bias occurs when we form a hypothesis and then interpret evidence in ways that support it. Confirmation bias is believed to persist even after the information that shaped such beliefs has been discredited or withdrawn (Nickerson, R.S., 1998). An investigator may then be more likely to discount evidence that conflicts with their assumptions and attach too much importance to evidence that appears to confirm an initial hypothesis or assumption. Ask and colleagues found that police recruits discredited or supported the same evidence depending on whether it was consistent or inconsistent with their hypothesis of a suspect's guilt. These findings suggest that memory for an event witnessed is highly flexible. (Ask, K et al. (2008)).

Expectation bias occurs when people's expectations about the outcome of an event or experiment influence the results of that event or experiment. Simply forming a hypothesis can create or exacerbate bias. There is a wealth of evidence that such bias is widespread in criminal investigations and forensic analysis, B (2008)

Once a hypothesis is formed, people search for information that supports it rather than for information that supports an alternative. That is, they unconsciously assume that the hypothesis in question is valid and search for evidence accordingly. They are not entirely indifferent to contrary information; assuming the truth of their hypothesis leads them to undervalue conflicting evidence or to be less likely to notice it in the first place. (Klayman J et al (1987)

An example of how bias impacts BME interviewees (in this case, job applicants, but relevant to investigations) was suggested in research in which White applicants were videoed interviewing white and black job applicants. They:

- Spoke and smiled more at white applicants'
- Hesitated and made more speech errors when speaking to the black applicant (leading to the black applicant making more speech errors due to mirroring
- Sat further back, leaned away, and gave shorter interviews with the black applicants''
- When white interviewers were trained to act towards the white applicants the way they had towards the black applicants, the white applicants performed worse, were more uncomfortable and judged the white interviewer to be less friendly (Word, Zanna & Coope, 1974).

Bias affects cases in which discrimination may be a factor. However, investigators are often unaware of evidence of potential discrimination, of the ubiquitous biases and stereotypes, and of the broader literature on bias in investigations. That is compounded by the fact that discussions of race, or discussions between white and black, minority and ethnic staff, can be fraught with difficulty, notably when investigators are anxious about saying or doing the wrong thing, and BME staff do not feel it is safe to say what they really think about the issue. (Thomas D. (2001)).

The courts and discrimination in investigations where race may be a factor

UK Courts have increasingly acknowledged, in decisions that directly impact the investigation process, that:

- It is very unusual for individual (or collective) allegations of discrimination to be upheld by employers or courts. (*Qureshi vs Victoria University of Manchester & Anor [2001] ICR 863*);
- Discrimination is rarely admitted, and thus the function of an internal appeal is to see what inferences could be drawn. (Case Mrs A Cox);
- NHS staff – including at senior level – may find it difficult to engage in honest discussions about racism and become defensive, falling back on stereotypes. (*Ms S Shaikh v Moorfields Eye Hospital NHS Foundation Trust: 2200854/2021*);

- Very little direct discrimination is overt or even deliberate. Discriminatory factors will, in general, emerge not from the act in question but from surrounding circumstances (including workforce and staff survey data) and prior history. *(Anya v University of Oxford [2001] IRLR 377 CA).*

Harm

Evidence of the harm that any investigation – even a well-conducted one – can cause is now well-established. Emerging evidence indicates the psychosocial impact of these processes on the individuals under investigation. Two decades ago, Cooke (2006) reported how in a toxic culture, investigations prompted fear and defensiveness amongst staff. More recently, growing evidence has emerged of:

- increased levels of anxiety, depression, distress, confusion and mistrust, as well as a sense of betrayal and even psychological trauma. (Hussain, F. (2022)).
- isolation, alienation from supportive structures and relationships, and an undermining of their personal and professional identity. (Jones, A et al (2023))
- feelings of shame, guilt and powerlessness (Maben J et al., 2023). Similar health impacts are found amongst whistleblowers and staff raising concerns about discrimination, where, notably amongst Black and Minority Ethnic staff, the impact of investigation exacerbates the pre-existing impact of race discrimination (Karlsen S, Nazroo J, 2001). A lack of support and empathy not only harms staff. They influence employees' experiences of the complaint procedure and their acceptance of the outcomes (Gardner D* et al., 2017). Moreover, it may not be only those whose acts, omissions, or concerns are being investigated who are harmed. Investigators, managers, witnesses and colleagues may also be harmed (Cooper et al, 2024).

At its extreme, investigations can trigger suicidal ideation with tragic consequences recorded in healthcare. No reliable estimate of NHS staff suicide links to investigation and work conflict processes exists, but such cases certainly exist. (Waters & Palmer, 2021).

Workplace culture in the NHS

The NHS is the largest employer in England. There is extensive research and data describing aspects of the workplace culture within which investigations are commissioned. The best-known data on concerns prompting investigations are those contained in the annual NHS staff survey and the Workforce Race Equality Standard. The former found that of staff:

- 61.8% feel safe to speak up about anything that concerns them in their organisation (q25e)
- 49.5% were confident that their organisation would address their concern (q25f);
- 55.3% of staff have gone into work in the last three months despite not feeling well enough to perform their duties (q11d);
- 28.8% said they often think about leaving their own organisation (q26a) (NHS National Staff Survey (2024)).

Discrimination faced by staff with protected characteristics remains a serious challenge with little improvement. For example, 28.6% of NHS staff are from Black and Minority Ethnic backgrounds, and they face very high levels of discrimination in recruitment, career progression and from colleagues. Discrimination in disciplinary processes has improved significantly in recent years, but all other data remains poor and shows no signs of improvement. (NHSE (2024))

Two reports have explored the experiences of BME staff in speaking up. The Francis Speaking Up review (Francis R, 2015) noted significant differences (n=20,000) in poorer experiences between White and BME staff

when raising concerns. Discrimination against staff with disabilities also adversely impacts disciplinary action and performance management of staff with disabilities (NHSE, 2024).

National and most local NHS data on bullying and harassment, discrimination and speaking up continue to show little or no improvement, exacerbated by the impact of Covid. For example, despite strenuous efforts in some organisations and national exhortations, staff's willingness to speak up about poor behaviour and unsafe practices showed little improvement, prompting the National Guardian Office's 2023-24 report on speaking up to be titled “Fear and Futility”.

Suspension

The Advisory Conciliation and Arbitration Service (ACAS) (2015) statutory Code of Practice on discipline and grievance states that it is important that employers:

- consider the wellbeing and mental health of anyone they are thinking of suspending
- only suspend someone if there is no other option
- plan what support they will provide to anyone they suspend

In the recent case of ***Dr Susan Gilby vs Countess of Chester NHS Foundation Trust,*** the Tribunal set out a summary of case law on suspensions at work at Para 294 -297:

> *Suspension changes the status quo from work to no work, and it inevitably casts a shadow over the employee's competence. Of course, this does not mean that it cannot be done, but it is not a neutral act.” If the suspension is precipitate or otherwise unjustified, it will likely amount to a breach of the implied term of trust and confidence giving rise to a claim of constructive unfair dismissal: Gogay v Hertfordshire County Council [2000] IRLR 703, CA.*
>
> *TElias LJ’s postscript to his judgment in Crawford v Suffolk Mental Health Partnership NHS Trust [2012] EWCA Civ 138, [2012] IRLR 402, noted that “This case raises a matter which causes me some concern. It appears to be the almost automatic response of many employers to allegations of this kind, to suspend the employees concerned and forbid them from contacting anyone as soon as a complaint is made, regardless of the likelihood of the complaint being established……. even where there is evidence supporting an investigation, that does not mean that suspension is automatically justified. It should not be a knee-jerk reaction, and it would constitute a breach of the duty of trust and confidence towards the employee if it were.*
>
> *I appreciate that suspension is often said to be in the employee's best interests, but many employees would question that, and in my view, they would often be right to do so. They will frequently feel belittled and demoralised by the total exclusion from work and the enforced removal from their work colleagues, many of whom will be friends. This can be psychologically very damaging. Even if they are subsequently cleared of the charges, the suspicions are likely to linger, not least, I suspect, because the suspension appears to add credence to them.*
>
> *It would be an interesting piece of social research to discover to what extent those conducting disciplinary hearings subconsciously start from the assumption that the employee suspended in this way is guilty and look for evidence to confirm it. It was partly to correct that danger that the courts have imposed an obligation on the employers to ensure that they focus as much on evidence which exculpates the employee as on that which inculpates him” [the Tribunal’s emphasis]. Case: Mrs S Gilbey)*

Collusion between witnesses

One largely unexplored feature of investigations is collusion among staff (including those involved in the investigations). This may take two forms. The better-known one is when staff, as a group (formally or otherwise), raise concerns linked to workplace conflicts – most notably about behaviours and safety risks.

In the case of Eva Michalak, where sex and race discrimination were found proved, senior doctors conspired to make complaints about her based on her having trained in Poland, after she became pregnant (Michalek vs Mid Yorkshire Hospitals NHS Trust EWHX (2007). The Employment Tribunal in Elliot Bowne identified similar collusion (2012), op cit.

Recently, in the NHS, courts have identified cases involving collusion between those seeking to punish staff. The best-known case is the ET successfully won by Dr Susan Gilby, CEO of the Countess of Chester NS Trust, in which the Tribunal concluded there had been a "conspiracy" among four Board members to drive her out after she made protected disclosures.

Another case involved a nurse, Laura Hindle, whose former colleagues, motivated by jealousy and likely racism, colluded to drive her from her post as a school nurse. The NMC failed to address this collusion, but the High Court did so on appeal and concluded that collusion had occurred between the witnesses against her. (Laura Yanda Hindle vs The Nursing and Midwifery Council (2025)).

In a case involving an NHS health and safety representative, Franco Villani, who was a victim of collusion between three managers to "swat this wasp", as they put it. (Case: Mr F Villani)

Another recent case (which emerged during our investigation) involved an NHS maintenance worker who, as a litigant in person, won his case after the Employment Tribunal judge concluded that a paralegal from a high-profile law firm had convened a meeting of Trust staff to agree how to handle the case. Such collusion only emerged in each case during court proceedings. It is impossible to tell how typical such collusion is, but it is reasonable to assume it is not unusual.

The financial and economic costs of investigations

Investigations often result in significant financial and economic consequences, influencing not just direct costs but also wider organisational resources and staff well-being.

Consultancy costs

Consultancy costs associated with investigations can be substantial, with employers frequently incurring substantial expenses when engaging external consultants to conduct these processes. Fees can vary widely depending on the complexity and duration of the investigation, as well as the type of consultancy used. While large consultancies often charge higher rates, even individual investigators may command considerable sums for their services. Such findings have been broadly corroborated through interviews; in two cases, the fee invoice was accidentally emailed to the person under investigation. The sums were £40,000 and £1000,000. Single-person investigators' rates were generally lower than those of large consultancies.

Lawyers

Investigations (especially poor ones) can lead to costly and protracted employment tribunal proceedings. For example, in a high-profile NHS employment tribunal, Capsticks LLP revealed a cost breakdown of £172,000 for legal representation in a case that was only partially heard. They disclosed that 20 lawyers and paralegals worked on the matter, with fees ranging from £82 to £160 per hour. Notably, a senior solicitor—promoted mid-case received over £47,000 in fees. Counsel fees for the barrister amounted to £50,775, covering a Preliminary

Hearing on 30 September 2021 and a 16-day Final Hearing that began on 1 November 2021 (Hencke D (2023)). We can reasonably assume that all leading employment lawyers in the NHS charge similar rates.

Other non-legal costs to the NHS

In addition to legal costs, there would have been substantial in-house costs. One estimate was that a typical NHS employment dispute would cost an employer £41,963 before legal costs (Kline & Lewis, 2018). This was calculated by estimating the costs of formal investigations, witness interviews, suspension on full pay, welfare costs (e.g., counselling and occupational health), and excluding legal costs. Accounting for inflation since 2017, the 2025 cost per case is estimated at £55,850. Local studies confirm these findings at an NHS Foundation Trust (Kaur M et al., 2019), whilst another NHS organisation achieved savings of more than £700,000 in one year by treating formal investigations as a last resort (Cooper et al., 2024). See also Kline R, Philipps C (2025).

The primary reason employers use formal procedures is the risk of litigation. However, Saudry and Lewis (2021) demonstrated that the costs of dismissals and resignations dwarf those of litigation. The most significant costs arose from sickness absenteeism (for which reasonable estimates can be made), presenteeism (for which the range of estimates is substantial), recruiting costs, and lost productivity. At the same time, new recruits were brought up to speed (for which reasonable estimates can be made).

These more measurable costs are in addition to those less tangible costs arising from the risk to patient care of emphasising a culture of blame rather than learning, the increased likelihood of staff presenteeism, lower morale and staff engagement and the cost of harm to staff in additional NHS and social care, and the quality of life of those impacted.

Trade unions

We found no academic research examining trade unions' (or their members') views on the effectiveness of unions in investigations. The only data available were from Kline R Warmington J (2024), who asked NHS survey participants (n = 1300) if they were members of a trade union and, if so, how helpful the advice they received was when raising a concern, including during an investigation. One third of respondents (35.2%) said it was not helpful at all, whilst 25.9% said it was ‘helpful ’or ‘invaluable’. A significant number were not in any union.

Relevant legal judgments on race discrimination

We considered these, as previous research suggested adherence to them might be erratic. Kline and Warmington (2024) summarised the key legal principles established by case law or used in NHS cases.

- All manner of euphemisms are used to avoid naming racism.
- Retaliation is not uncommon once a claim of racism is made.
- Tribunals regularly criticise Human Resources staff for falling short of the expected standard in race discrimination cases.
- The quality of investigations is criticised in several NHS cases.
- Courts have increasingly found that discrimination is rarely admitted.
- Very little direct discrimination is overt or even deliberate. Reference is made to the employers *“Failing to consider the cumulative impact of individual detriments is a frequent failing”.*
- Tribunals regularly give as a reason for upholding claims that too high an evidential bar is set.
- Tribunals have found that even when the right decision is reached locally, the NHS organisation fails to act on the recommendations.

The track record of some lawyers and external consultants

Data on the track records of those directly involved in conducting investigations and associated interventions are poorly documented. Due to the complete lack of previous research in this area in the NHS, we are reliant on limited publicly available data from Tribunals on NHS cases, such as the following.

Capsticks LLP, a prominent legal firm representing NHS organisations, has faced criticism for its conduct in employment tribunals and workplace investigations. Capsticks' involvement in both litigation and internal NHS investigations gives rise to perceived conflicts of interest. When the same firm investigates internal complaints and defends the organisation in litigation or tribunals, there is a risk that any investigation may be influenced by a need to protect the organisation's legal position rather than to uncover the truth.

Clive Rennie, a senior NHS employee, brought a claim for constructive dismissal against the NHS Norfolk and Waveney Integrated Care Board (ICB). Rennie's claim centred on an alleged agreement that he would be made redundant, which the ICB later reneged on. Capsticks represented the ICB in the Employment Tribunal but did not undertake the investigation.

Capsticks, acting for the ICB, repeatedly assured the tribunal that no draft versions of the grievance investigation report existed. The judge was highly critical of the Respondents' repeated denials that draft versions of the grievance investigation report existed. This was later proven false after a tribunal order forced disclosure.

Capsticks submitted a request that the judge be removed for "inappropriate conduct, tone and disparaging comments" The request failed and was dismissed by the Tribunal as "perhaps a cynical attempt to hijack the proceedings and delay further process".

Ibex Gale was commissioned by The Countess of Chester Hospital NHS Foundation Trust to investigate concerns raised by Dr Susan Gilby (op cit) under the Bullying and Harassment Policy.

Ten employees were interviewed—seven for the respondent and three for the claimant—who criticised the limited witness list. The Trust Director who commissioned the report found it "well-structured" and "evidence-based," Simon Bond (Ibex Gale) concluded that the "*claimant's belief that she had been bullied by IH (the Trust chairman) and other NED's had arisen from several factors: The very difficult circumstances that the Trust has found itself in recent times including the Lucy Letby trial, a worsening financial position and unfavourable CQC report…the undoubted pressures on the claimant and second respondent as a result, different styles of working and focus, different styles, robust and challenging questions, the failure to work collaboratively, and disagreement over the need for external support*".

While the Trust praised the report by Ibex Gale, the Employment Tribunal did not accept that the investigation identified the real issues. It rejected the report and much of the Trust's other evidence. It unanimously found that Dr Gilby had been the victim of a conspiracy to oust her after she accused the chair of bullying and harassment.

PRIMARY RESEARCH FINDINGS

Overview of Survey Responses

Quantitative and qualitative responses were gathered from the 'Investigating the Investigators' online survey, which collected views between January 2025 and April 2025. This primary research aimed to gather insights from individuals involved in workplace investigations within the NHS, exploring their experiences with grievances, protected disclosures (whistleblowing) and disciplinary actions.

A total of 126 responses were received, primarily from current and former NHS employees with direct experience of workplace investigations. The survey also included those who had supported others through these processes and individuals who had commissioned investigations.

The survey included multiple questions covering various aspects of workplace investigations. It focused on their perceptions of the investigation process and its quality, their experiences with the investigators, and their overall satisfaction with the investigation.

Who Took Part

- **Participants:** The survey was completed by a mix of current and former NHS staff, as well as individuals who supported others through investigations (such as union representatives and legal advisers). Respondents included those who had raised grievances, made protected disclosures (whistleblowing), been subjected to disciplinary investigations, or supported others through these processes.
- **Experience:** Most respondents had extensive NHS experience, with many having worked 11–20+ years in various roles, including clinical, HR, and management positions.
- **Roles:** Respondents held a variety of roles, including clinical and non-clinical positions, HR professionals and union representatives, with ages ranging from 25 to 64 years.

Figure 1: How many years have you or did you work in the NHS? N=118

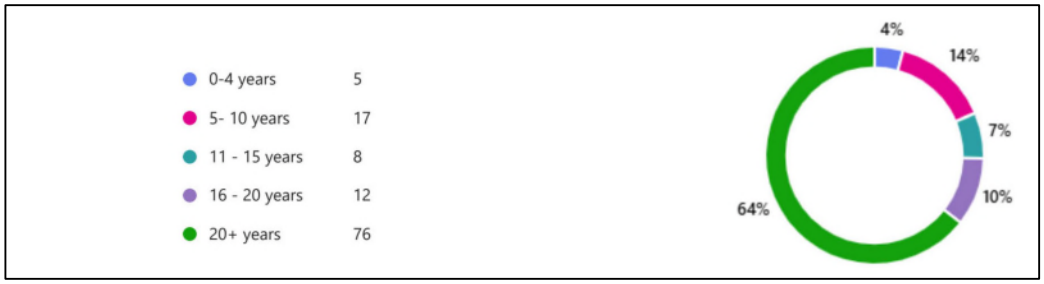


Figure 2: Have you ever raised a grievance or protected disclosure, or been subjected to a disciplinary action that has required a workplace investigation? N=118

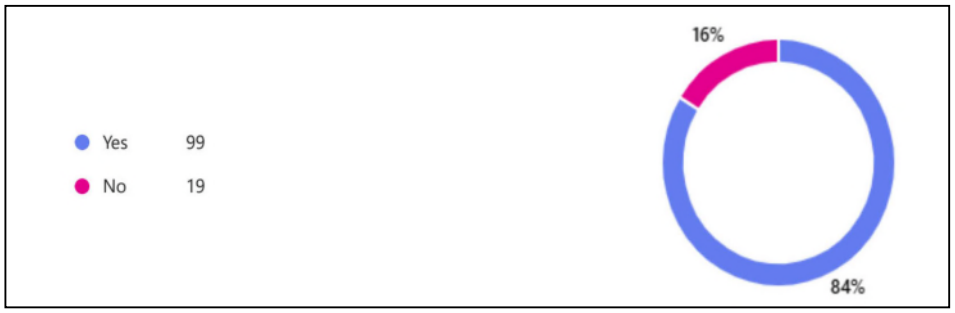


Figure 3: Which of the following apply to you? Tick all that apply

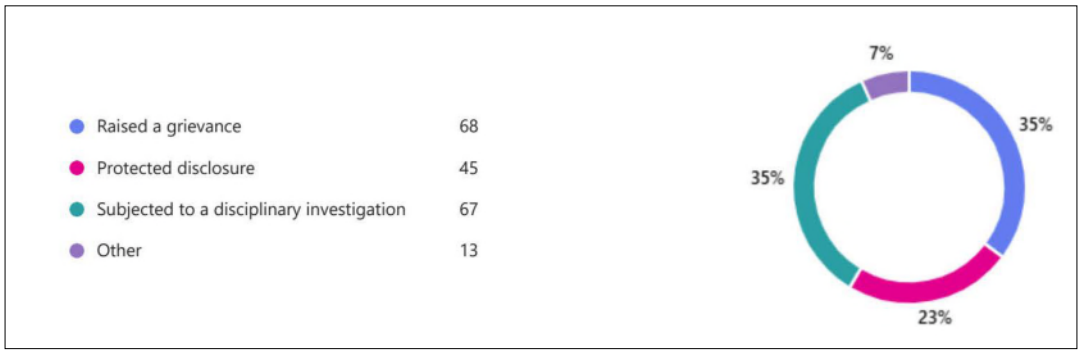


Figure 4: Was the investigation undertaken internally (by someone your organisation employs, e.g. HR) of by an external investigator (someone not employed by an NHS employer)? N=99

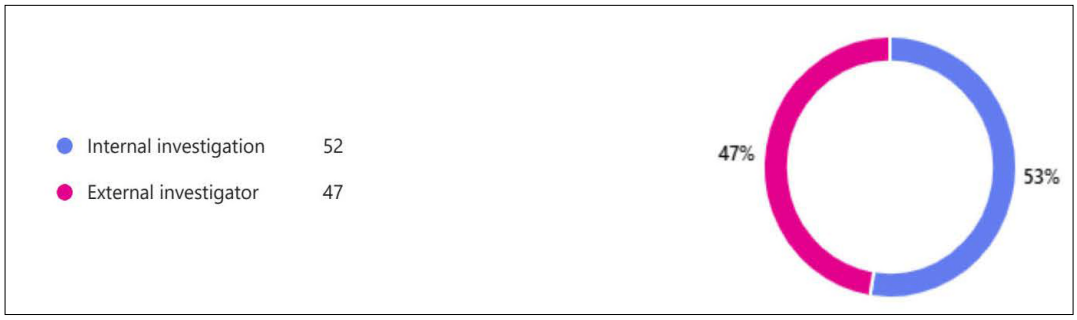
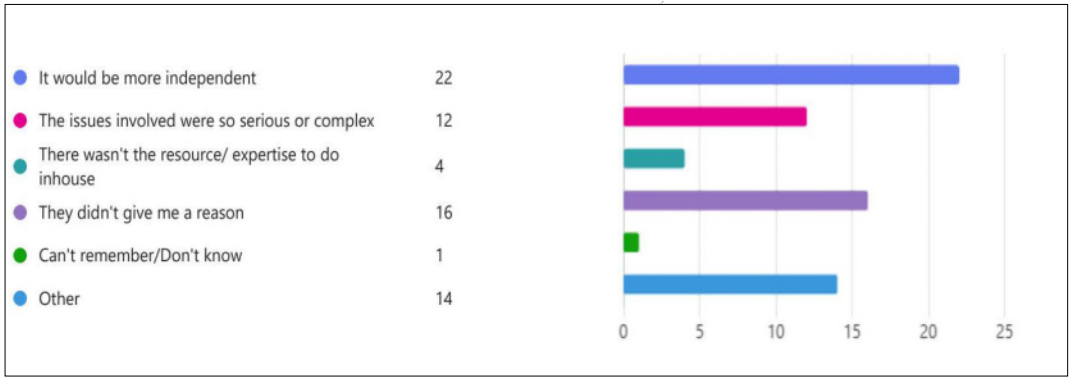


Figure 5: What was the reason the employer gave for using an external, not an internal investigator? (Tick all that apply)



Key Themes Identified

- **Investigation Process Concerns:** Many participants described dissatisfaction with both internal and external investigations, citing issues such as lack of impartiality, poor communication, and predetermined outcomes.
- **Bias and Discrimination:** Allegations of discrimination (especially race and disability), bias, and lack of understanding of equality, diversity, and inclusion were common. Several respondents felt that investigators lacked expertise in these areas.
- **Witness Handling and Terms of Reference:** Respondents often reported that their suggested witnesses were not interviewed, and that terms of reference were not shared or agreed upon.
- **Confidentiality and Professional Conduct:** Concerns were raised about breaches of confidentiality, lack of transparency, and unprofessional behaviour by investigators or those commissioning investigations.
- **Impact on Wellbeing:** Many described significant negative impacts on their mental health and careers, including trauma, stress, and loss of trust in the process.

- **Positive Experiences:** A small minority reported thorough, fair, and professional investigations, particularly when the investigator was experienced, impartial, and communicated well.

Figure 6: Were the witnesses you put forward interviewed? N=99

Figure 7: Did your grievance, protected disclosure, or disciplinary action involve allegations of discrimination? N=99

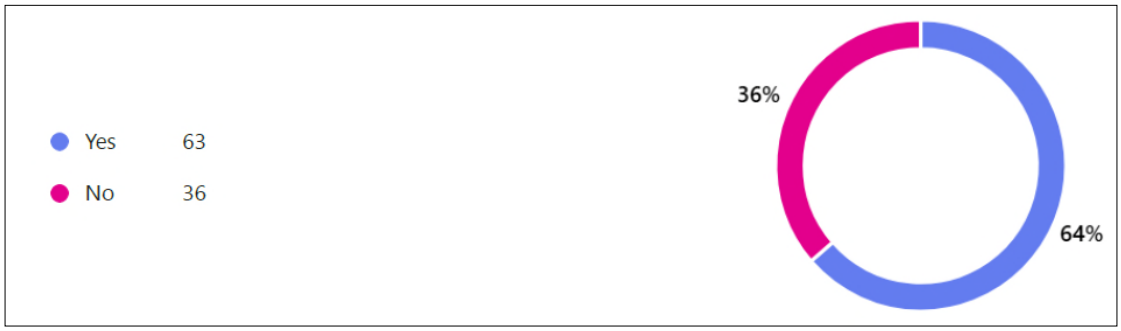


Figure 8: As your grievance, protected disclosure or the disciplinary action involved allegations of discrimination, did the investigator.....(Tick all that apply)

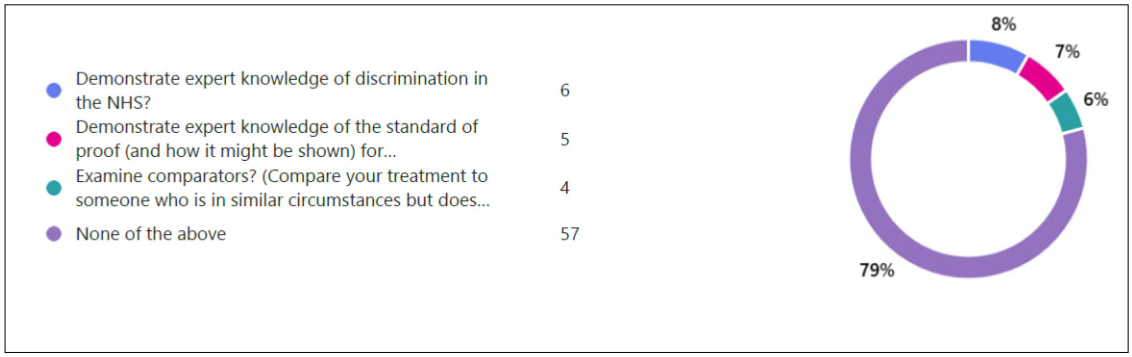
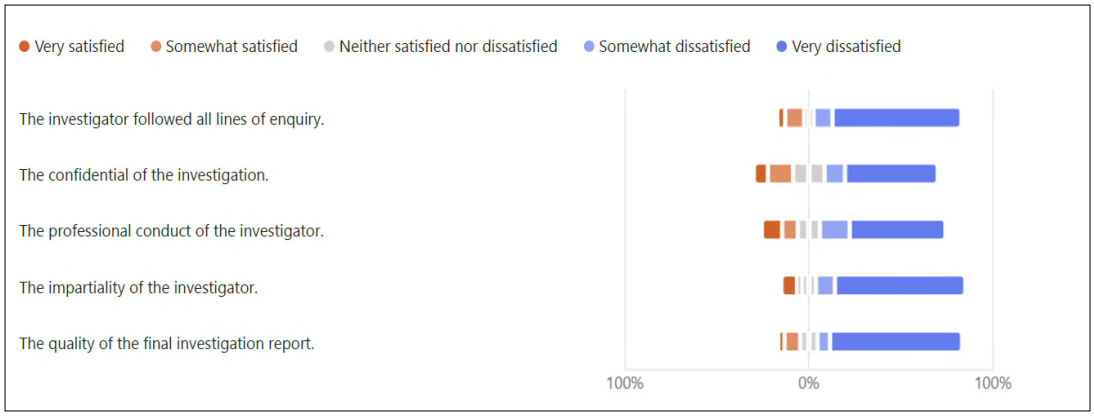


Figure 9: How satisfied were you with the following (even if you didn't agree with some or all of the conclusions) N=117



Demographics of Respondents

- **Gender:** The majority of respondents identified as female, with a smaller proportion identifying as male or preferring not to say.
- **Ethnicity:** Participants represented a range of ethnic backgrounds, including White, Black and Minority Ethnic (BME), Asian, and others, with several referencing the Workforce Race Equality Standard (WRES) definitions.
- **Age:** Respondents ranged from 25 to 65+, with most in the 45–64 age bracket.
- **Disability:** Some participants reported that their day-to-day activities were limited by a health problem or disability.
- **Sexual Orientation:** Most identified as heterosexual or straight, with a few identifying as gay, lesbian, or preferring not to say.

Views of respondents – Interviews and survey responses

To gain deeper insights into workplace investigations within the NHS, survey participants were invited to indicate their willingness to participate in a structured interview. Additional interviews were also arranged to ensure a broad spectrum of experiences and perspectives were captured.

A total of 36 individuals (four of whom had not completed the survey) were interviewed, including primarily frontline clinical and non-clinical staff and NHS managers, as well as a small number of human resources professionals, external investigators and trade union representatives. The themes discussed were based on the literature review and previous survey findings. These themes were further refined during the analysis. This approach enabled the research to build on initial survey results, allowing for a richer understanding of the complexities and nuances encountered by staff during workplace investigations.

Note that where a quote is not attributed, it was from a respondent to the survey, not from an interview. In some cases, we have slightly revised the attribution of quotations and shortened others without altering their meaning.

Theme One: When a formal investigation might be necessary

The decision to initiate a formal workplace investigation can have significant implications for all involved, yet many remain unclear about the rationale for bypassing informal avenues of resolution. One-third of interviewees simply did not understand why there had been no informal discussion before starting a formal investigation. The absence of preliminary, informal dialogue often left staff feeling alienated and perplexed. Several interviewees questioned the necessity and proportionality of launching formal investigations without first seeking to resolve matters through less formal means:

> *"I have never been able to understand why someone didn't have a quiet word with me to hear my side of the story before launching the dogs of war at me. I was accused of lying but I had documentary evidence that I hadn't. What I soon realised is that although I was a senior manager, other people's jealousy had coalesced to bring me down. Maybe it was because they didn't think a black woman should be a senior manager? I hope not".* ***Senior manager, Acute Trust***

> *"Our Trust talks a lot about a just culture, but in my case, they rushed into an investigation because I alleged, I was subjected to race discrimination after watching three people I had managed and support get promoted but I was turned down for every job I went for. The WRES data said we had a problem but instead of listening to me we dived into an investigation done by a junior HR person who just didn't have a clue about any form of resolution that wasn't blatantly obvious. The interview was very difficult and I was accused of being angry and disrespectful after I asked the investigator how would he decide whether the subtle racism I'd experienced existed".* ***Nurse manager***

One investigator was adamant:

> *"If you look at most Tribunal cases that NHS organisations lose, it is because they have not followed their own processes".*

Theme Two: Commissioning managers and the type of investigation

Commissioning managers were often described as ill-equipped to oversee investigations into discrimination, frequently delegating responsibility without ensuring that investigators had the relevant expertise. This led to reports that were legally and procedurally flawed, and in some cases, dismissive of the complainant's experience. Some take their role seriously and want to ensure the investigation is fair, competent, and focused. However, many have received little training and are dependent on HR for guidance:

> *"I've had a couple of investigations where the Commissioner or HR have tried to nudge me away from any finding of racism and towards "poor behaviours". In one case it led to a standoff. I wouldn't work there again".* ***Investigator***

A significant concern raised by participants was the ambiguity surrounding the purpose of workplace investigations—whether they are intended purely **for fact-finding or to determine if there is a case to answer.** This lack of clarity often led to confusion, mistrust, procedural inconsistencies, and an extended timescale. Some investigators themselves expressed uncertainty about their role. One noted:

> *"Sometimes I'm told it's just fact-finding, but then the report is used to justify disciplinary action. It's not always clear what the end goal is."* ***Trade union official***

Many interviewees described investigations that appeared to be **prejudged or outcome-driven**, rather than neutral inquiries. The framing of questions, the selection of evidence, and the tone of communications often suggested that the investigator was working toward a conclusion rather than objectively exploring the facts. One participant observed:

> *"It felt like they were trying to build a case against me rather than understand what had happened. The questions were leading, and they ignored evidence that didn't fit their narrative."* ***Resident doctor***

Another shared:

> *"I wasn't sure if they were investigating the issue or investigating me. It was never made clear what the purpose was, and that made the whole process feel hostile."* ***Matron***

This confusion was compounded by the lack of transparency in communications. Participants frequently reported that they were not informed about the scope or intent of the investigation, nor were they provided with the terms of reference. This lack of procedural clarity contributes to the perception that investigations are not impartial but rather tools of organisational control.

The blurring of roles—between fact-finder and decision-maker—can have serious consequences, primarily when findings are used to support formal action without a clear evidentiary standard.

> *"After the allegations were all not upheld, I lodged a grievance about the process which was vindictive. In hindsight, I was really naïve. The Trust put a band 7 HR person in to investigate, and they didn't appear to have a clue. I later learnt it was their first investigation. When I appealed the extraordinarily vague outcome that rejected my grievance, I was told |I couldn't, as the investigation was at the first informal stage, so I had to relive everything again".* ***Senior clinician***

Theme Three: Terms of Reference

One of the most frequently cited issues was the **lack of clarity in the Terms of Reference**. Investigators said these were not always clear and are a cause of dispute. As one investigator explained:

> *"I always have 10 million questions about the terms of reference. I never feel it's entirely clear. It's always super vague… there's a lot of unspoken stuff they want you to investigate."* ***Investigator***

Several interviewees described how terms of reference were either vague, changed mid-process, or skewed to favour senior management:

> *"The terms of reference? They were a joke really. They changed three times and the final report bore no resemblance to what they were supposed to be. In fact, I was not asked questions at all about one of the three terms of reference. When my union rep queried this, we were told well, that one has really been dropped".* ***Senior manager***

One participant recounted:

> *"We agreed [on the terms], then we were both happy, and he came back to me and said, oh, they've slightly changed. And when it changed, they were changed in favour of the directors."* ***Senior finance officer***

Another said:

> *"The terms of reference bore no resemblance to the whistleblowing concerns I had raised. It was treated like I had raised a grievance. By the end, the investigator seemed more interested in why I had raised these concerns rather than getting to grips with a serious breach of Trust values. The investigation turned into a culture review with the specific issues requiring accountability and addressing sidelined. Then, when I complained, they had to do another investigation into my specific concerns. A complete waste of money. And the advice they got from NHS England was hopeless".* ***Senior nurse***

The ambiguity of investigative scope undermines trust and raises doubts about the integrity of the process. It also affects the selection of witnesses and the framing of questions, which are crucial to a fair outcome. Interviewees often appeared unaware of investigators' influence on the Terms of Reference.

> *"I'm very conscious of the consequences of getting things wrong. So, I try to ensure the terms of reference capture what should be investigated and won't take a case on if it doesn't".* ***One-person investigator***

One large investigator said:

> *"We have a fairly detailed scoping section to the work …….. which helps us to then work with the organisation to draft the terms of reference"*

Theme Four. Investigation quality

Several interviewees noted that, even when the allegations were broadly outlined before the interview, without prior knowledge of their specific details, it was difficult to respond adequately. Although there was

often an invitation to send documents and follow-up notes to the investigator, there was rarely evidence that they were read, let alone included in the report. This appeared to be especially true with larger external consultants and lawyers. Two single-person investigators also reported having observed evidence of this when asked to review investigations conducted by other organisations.

Evidence

A good investigation requires strong documentary evidence when available. Any evidence about the individual's past track record and minutes of key meetings are obvious. One investigator said

> *"The person whose grievance of potential disciplinary you are investigating needs to have access to their emails and calendar, as these may contain crucial evidence. Good officials don't make access to these difficult. I always ask if subjects of an investigation have that access".* ***Investigator***

One interviewee said

> *"The Trust had commissioned a report on culture. It was clearly directly relevant to the disciplinary investigation into me. The Trust would not provide it to me and even more amazingly, would not provide it to the investigator when they asked for it".* ***Trade union representative***

Those who raise concerns, those subjected to investigations, or indeed the investigators themselves often fail to request, and frequently fail to obtain, crucial evidence. Interviewees, when asked, were often unaware of their rights to obtain evidence that might be useful. Examples given included

- Their personal file, which might contain evidence of previously excellent appraisals and performance
- Emails and other communication between those most closely involved in events leading up to their disciplinary investigation of the grievance
- Minutes of meeting that might be relevant – and in some cases, copies of the Teams meeting
- Contextual information, such as FTSU reports, WRES and WDES data, and safety data, which might help explain when behaviours have become normalised so that specific cases are being considered entirely in isolation

There are statutory rights to obtain information, but staff may either be unaware of them or make requests so large that they can be lawfully refused; therefore, a good representative would encourage limiting a request while remaining determined to obtain it.

> *"When I was first told I was going to be investigated, I had no idea what information I could ask for or how to use it. I'd say to anyone that getting such data is absolutely essential to your case".* ***Band 6 nurse***

> *"I did a Subject Access Request. I got 17 emails. I knew there were lots more so I went all the way to the Information Commission and hey presto 1600 were miraculously found".* ***Ancillary staff worker***

One investigator said:

> *"I always want to know data that helps me build a picture of the working environment, not least because if the case ever went to a Tribunal, it might well be information the Tribunal would expect me to have considered"*

A number of interviewees realised when their cases were lodged at an Employment Tribunal that they could legitimately ask for all sorts of documents as long as they were relevant – and that it might be a good way of obtaining previously redacted ones:

> *"It was a treasure trove. I suddenly found the evidence for what I had suspected all along those three managers had been conspiring to nail me. The investigator refused to consider that possibility. But here it was in black and white".* ***General manager***

One interviewee explained how his request for a list of who had been in attendance in a planning meeting with an external lawyer ahead of a case was crucial:

> *"I knew they were colluding, but when we were able to get the judge to ask the lawyer (from a well-known legal firm) whether there was such a meeting and what its purpose was (to brief witnesses), the organisation's case collapsed".* ***Maintenance worker***

Access to relevant information during workplace investigations is a critical factor in ensuring fairness and transparency. However, the interviews reveal widespread concerns about restricted access, selective use of data, and the withholding of key documents. Many participants reported being denied access to their personal files, including performance reviews, disciplinary records, and correspondence relevant to the investigation. This lack of access not only hampers their ability to respond effectively but also contributes to a sense of powerlessness. One participant shared:

> *"I asked for my file and was told it wasn't available. Later, I found out it had been used in the investigation without my knowledge."* ***Administrator***

Another added:

> *"They used documents I'd never seen before. I wasn't given a chance to comment or clarify anything."* ***Clinical educator***

In addition to personal files, participants highlighted the **absence of specific organisational data** that could have contextualised their concerns. This includes recruitment statistics, career progression data, Workforce Race Equality Standard (WRES) metrics, staff survey results, and staff turnover figures. Such data is essential for identifying patterns of discrimination or systemic issues, yet it was often omitted or inaccessible. One interviewee noted:

> *"I asked for WRES data to support my case, but they said it wasn't relevant. How can you investigate discrimination without looking at the numbers?"* ***Nurse***

A lawyer emphasised the importance of ensuring data was not destroyed:

> *"Unfortunately, including in my own experience, some employers are willing to break the law and destroy or hide key documents. It emerged in the case of Chris Day and was a factor in the Susan Gilbery case. I always make it one of my first interventions to seek an assurance that documents are secured safely and will not be destroyed, and I give the categories of evidence I am referring to".*
>
> *"The destruction of relevant documents was so blatant that the Tribunal refused to accept the Trust's explanation"* ***SMT member***

Interviews

The quality of the note-taking appears variable. While some investigators would rely on transcripts "in case we end up in a Tribunal", others took notes. The quality of some note-taking was regarded as very good, but two problems were highlighted. If a notetaker is provided by the organisation commissioning the investigation, there is a risk that, unless they are accustomed to taking investigation notes, significant details may be lost or entire passages may have to be "decoded", as one whistleblower put it. When an investigator took their own notes, these often had what the interviewees thought were key passages missing – not unreasonably, because it is challenging to conduct an investigation and take notes simultaneously.

One investigator who reviewed an earlier investigation was surprised to find that interview notes to be checked were sent as PDFs rather than in Word, making it much harder for them to suggest amendments.

Survey respondents and interviewees also reported failing to obtain proper witness statements, with some reporting that no signed statements of truth were obtained from witnesses.

Some interviews did not allow the interviewee to respond to the allegations that prompted the investigation. Sometimes this is because the interviewee was not clear about what the "allegations" were.

As one interviewee put it:

> *"It is pretty hard to respond to allegations if you are not clear what they are".*

In some cases, a "factfinding investigation" was conducted as a general conversation with questions such as "how did you get on with X", or "did you think you were treated fairly by Y"; or "do you feel with hindsight you might be over-reacting".

> *"It felt like a fishing trip, not a forensic interview".* ***Project manager***

> *"The fact-finding interview just came across as a time-wasting exercise – it added ten weeks to the timeline."* ***Medical consultant***

Duration of the process

Almost all respondents and interviewees were concerned about the duration of the process. A number of interviewees said that even where the allegations were set out at the interview, if there was no advance knowledge of their precise nature, it was impossible to respond. Although there was often an invitation to send documents and follow-up notes to the investigator, there was rarely much evidence that they were incorporated into the report. This seemed to be especially the case with two of the external organisations.

Cases were reported to drag on for extensive periods, with a number of individuals noting their suspension had lasted months (or even more than a year).

> *"Currently suspended for 8 months. Despite providing a detailed timeline of events, and persons involved, the trust is just wasting time and prolonging this".* ***Consultant***

> *"The biggest negative was that it took so long for the whole procedure to be carried out. At every stage, there were multiple delays".* ***Divisional manager***

Witnesses

Witnesses were another source of concern. Some investigators were clear that all witnesses who might significantly add to the evidence should be interviewed. However, there were repeated concerns that witnesses, who were complainants or subjects of investigations, had proposed, were not interviewed, or were interviewed so poorly that it unbalanced the investigation.

A lot of problems occur in investigations because a decision often depends on witness credibility, and that is open to bias:

> *"My sense is employers need to be careful here because I think Tribunals are now more questioning of credibility on some issues".* ***Investigator***

Numerous cases were offered where witnesses put forward were never contacted, even when they were clearly more than character witnesses:

> *"I'd asked for an external investigator for independence. But after what she did about witnesses, I lost all confidence. All 24 of the management witnesses were interviewed but only 3 of my 11 and they were interviewed for far shorter period than the management witness. It was lopsided".*

Another witness added an interesting fact:

> *"I found out the witnesses I had put forward were having very short interviews whereas my impression was that management witnesses (there were many more) had much longer interviews. When I got the data on this, I discovered the balance of the witness timer was ridiculous. Moreover, the interviews were vague and did not touch on the main allegations against me. And this was reflected in the report, where evidence from my witnesses was almost non-existent. The external investigator was very pleasant and friendly, but she chose to interview 21 Trust witnesses, but only 3 of the 19 I put forward. The word count I did was even more worrying. The management witnesses' evidence was 9.25 pages long each, and my three were just 15 pages in total".* ***Consultant***

There was some push back on the suggestion of bias in the selection of witnesses

> *"We go through a careful process in the course of the investigation of looking at the individuals who have been put forward as potential witnesses…..and then making a determination based on relevance of information and there is maybe a degree of proportionality"* ***Investigator from a large firm.***

Witnesses are key to most investigations. One investigator said

> *"Witnesses are key, including whether they have left the organisation or don't want to give evidence. You don't need, in my view, witnesses who are just a character witness (certainly not more than a couple), but you should invite written statements. Witnesses who have left the employer may be especially useful and they can often speak more openly. Expert witnesses who can testify about standards, culture, or clinical practice may be essential. My alarm bells go off if a number of witnesses change their mind and don't want to give evidence".*

Another said; unavailable of key witnesses were an issue

> *"As an investigator, I have had to insist on interviewing individuals who do not want to be interviewed. In one case, a director sent a message saying they couldn't see how their presence was needed and, in any case, they were exceptionally busy. This was the person who had insisted that an investigation took place and I want to ask why. In another case, I wanted to interview someone but they had left. They were clearly a crucial eyewitness. I was told Trust policy was not to interview ex-employees. I got my way by pointing out that this ex-employee was willing to give evidence whilst others were afraid to".*

One interviewee said

> *"I was told by the external investigator that the manager I had raised concerns about had decided that almost all my witnesses would be blocked from giving evidence. The investigator apologised, saying she had never come across that before".* ***Senior clinician***

Several participants described how only certain excerpts were included in the final report, often those that supported the organisation's position.

> *"They quoted one line from a witness who supported me, but ignored the rest of their statement. It felt like they were cherry-picking".* ***Deputy director of finance***

This highlights the absence of standardised procedures and the reliance on individual discretion.

Theme Five: Standard of investigations

The competence of those involved in investigations—particularly when discrimination is a central issue—was a major concern raised by participants. Many described a lack of understanding, sensitivity, and procedural rigour among investigators, commissioning managers, and HR personnel when handling cases involving race, ethnicity, and other protected characteristics:

> *"I have commissioned many investigations from a variety of different external providers, including law firms, HR consultancies and individuals. I have never had concerns about the confidentiality, professional conduct or impartiality of external investigators, but there have been differing standards in terms of the completeness of the investigations and the quality of the final report".*

Participants frequently reported that **investigators lacked the necessary cultural competence** to understand the nuances of discrimination. This led to superficial inquiries and missed opportunities to explore systemic issues. One interviewee stated:

> *"He just didn't understand what institutional racism looks like. He treated it like a personal disagreement rather than a structural issue."*

Another participant shared:

> *"The investigator kept asking why I felt discriminated against, but didn't seem to understand how patterns of behaviour over time can be racist even if no one uses slurs."*

The more experienced investigators described how, when they started, they were anxious and rather overwhelmed with the responsibility.

> *"I suddenly realised that potentially I had someone's career and welfare in my hands, and I had better get this right. Although I did have support from HR, all they did was make sure I followed the process. I was doing a full-time job as well without any backfill".* ***Trust manager***

One internal investigator said that when starting work on an early case with an external investigator from a well-known firm:

> *"I learned a lot from watching her. All I had previously was a one-day training in Maintaining High Professional Standards – the national guidance for investigating doctors' fitness to practice. I think if Trusts want to develop in-house expertise, they have to provide backfill and better training".*

Multiple individuals reported that their cases were not thoroughly examined during the investigations.

> *"The investigator did not interview colleagues who I named as my witness; the investigator appeared to follow the process/procedures more than understand the issues at play, racism,".* ***Nurse***

> *"The biggest area of concern I have in NHS investigations of misconduct allegations is the lack of basic investigative principles and skills. Specifically: failure to ask open questions; leading the witness; failure to ask probing questions; failure to follow up and ask for specific examples and evidence"* ***Trade union representative***

External investigators

External investigators are used for a substantial proportion of cases involving senior staff. In several cases, this was requested by staff who felt an external investigator would be more independent and possibly more competent. The use of external investigators is often proposed on the grounds of expertise and independence. However, the interviews reveal mixed perceptions about their independence and focus, with many participants questioning whether external investigators truly operate free from organisational influence. One participant remarked:

"They say they're independent, but they're paid by the trust. It's hard to believe they're not trying to deliver what the employer wants."

One interviewee said

"I asked for an external investigation because I thought that would be more independent. I was sent a link to the proposed company and they looked pretty good, they were polite and friendly, and I was quite relaxed. But they failed to interview most of my witnesses, including two crucial ones and when the report came, I realised I had been stitched up because my evidence was almost entirely absent and the investigator had included several key pieces of evidence against me that I had documentary proof were completely inaccurate".

Another said

"I was pleased they appointed an external investigator, but I got the Terms of Reference two days before I was interviewed, so I couldn't prepare properly, the investigator asked me about matters well outside the Terms of Reference and I never got an outcome report, just an online call with the investigator, without any evidence supporting the rationale for the outcome being provided"

These comments suggest that, for a significant number of interviewees, contractual relationships and reputational considerations are perceived as potentially compromising the perceived neutrality of external investigators. Even when investigators do maintain procedural independence, the framing of the terms of reference and the selection of evidence may subtly shape the outcome.

"The investigator was polite and professional, but it felt like they were steering the process to avoid any findings that might embarrass the organisation." ***Senior clinical manager***

Despite these concerns, a few participants did report positive experiences with external investigators who demonstrated professionalism, transparency, and a commitment to fairness. These cases, however, were described as exceptions rather than the norm. One individual expressed high satisfaction with their investigation experience, specifically praising the investigator's thoroughness and dedication.

"The investigator was so thorough and wrote 100s of pages and gathered so much evidence and appendices. It was her 1st investigation and she took it so seriously".

Some investigators themselves acknowledged the tension between independence and organisational expectations. One shared:

"I try to be objective, but I know the Trust is expecting a certain kind of report. There's pressure to avoid making waves."

In terms of focus, external investigators from the larger organisations were often seen as adhering more strictly to the terms of reference without exploring broader organisational issues. This can result in missed opportunities to address systemic problems.

"They stuck to the brief, but the brief was too narrow. They didn't look at the wider context or patterns".

There were specific concerns. Whilst a couple of investigators were complimented for their understanding of racism, others were seen as being out of their depth.

"An external investigator was commissioned. Their website was full of the importance of equality. I asked, since racism was an issue in my case, for an example of how she had gone about a previous case involving racism. I was given a case about disability. That put me on edge. The interview style was friendly and pleasant, but became increasingly awkward as the issue of race was considered. It

became clear she was not at ease, did not understand any but the most straightforward forms of racism. The finding was that whilst racism couldn't be ruled out, it was not established. This was in an organisation that another investigation had concluded that the Board did not understand racism".
Senior management team member

Comparison of External vs Internal NHS Investigations

Time constraints and competing responsibilities were reported to hinder the effectiveness of internal investigations, as managers tasked with conducting them often struggle to balance their regular duties, resulting in delays and reduced quality. Complex cases are particularly affected, as they require time, expertise and careful handling.

Internal investigations, while potentially benefiting from organisational knowledge, face significant criticism for their lack of impartiality. Internal politics and relationships can compromise investigations. Several specific issues were identified:

- Incomplete or poor-quality reporting
- Cases being allocated to potentially inappropriate investigators, such as bank staff for executive-level investigations
- Inappropriate allocation of cases to investigators with prior relationships to subjects
- Extended timelines resulting from no backfill for a busy manager

Both internal and external investigations face challenges regarding independence and bias.

"The internal 'commissioning manager' allocated to the case by HR had been my deputy director (whom I had appointed and had maintained contact with after I left the organisation, before the allegations were made)".

"The allegations of bullying (etc) were made after I had left the organisation where I had been an employed executive director. The HR dept allocated the case to a bank band 7 HR investigator".

External investigators are sometimes viewed as more professional and thorough. One concern was whether some external investigators had sufficient knowledge of NHS processes and context, leading to extensive and repeated explanations. In two cases, they seemed unaware of the Trust Standards of Behaviour.

The need for repeat business was felt likely by some interviewees as likely to influence external investigators, while existing relationships and organisational politics can compromise internal investigators. Interviewees were notably critical of the understanding of race discrimination by both internal investigators and large external ones.

There were multiple claims that investigations (internal or external) appear biased and influenced by employers. There are specific instances where:

- Investigators were perceived by interviewees to be gathering hearsay evidence against complainants
- Investigations showed signs of being influenced by commissioning managers
- Investigators were replaced mid-investigation without explanation

Commissioners of external investigations report mixed experiences regarding the quality and impartiality of investigations. While some indicated they had no concerns about the confidentiality or impartiality of external investigators, others noted variations in the thoroughness of investigations and in report quality.

Potential conflicts of interest were mentioned several times. One individual external investigator was so concerned about the pressure on her to reach a foregone conclusion (with the implication for any future contracts that:

> *"I got called out of hours to be told that the original conclusions had been and how they had been changed under immense pressure from a Board member. I was distressed and so was the investigator who had evidently refused to go as far as they wanted".* ***Director***

Overall, it was evident that investigators, HR, and trade union representatives all held the view that reliance on full-time managers and external investigators was likely to change, with some noting a trend towards small, expert, dedicated teams. One investigator from a larger organisation said

> *"Having spoken to organisation about how they're dealing with investigations…..with the cost pressures they are under and let's be honest you know 3external investigators are not cheaper, they are an additional cost, it is understandable, therefore that NHS organisations in particular are looking to more efficient ways to conduct organisations and I think that's absolutely right because they have a duty to use public funds in the best way possible"*

Human Resources

An apparent lack of legal and procedural knowledge among some investigators and HR staff was highlighted as a recurring issue. A lack of understanding of employment law, particularly regarding discrimination and suspension protocols, was perceived to lead to flawed decisions and procedural errors.

One investigator said:

> *"I think a growing number of HR leaders are keen to move away from jumping straight into formal investigations rather than early intervention but they may get pushback from senior managers. It happened to me when I was in HR".* ***Former HR business partner***

One investigator told us:

> *"I was asked to review a report by another investigator from a large organisation. It was rejected by the Trust because it was really sloppy. I reviewed the report, confirmed it was flawed and left the Trust open to risk, but when I sat down with the member of staff, the union official and the Chief People Officer (CPO), the CPO did eventually accept race discrimination had occurred, but it took ages. Afterward, he said the Trust lawyers had counselled caution".*

A HR Business Partner said

> *"In my Employment Relations role, I advised on an investigation, it concluded race discrimination had occurred. My manager said you're going to have to find a way to change that in some way because there will be hell to pay if the CEO sees this".*

One whistleblower told us:

> *"I never understood why there wasn't an informal conversation at the very start of the kind I always sought to do. I wanted to take the Trust to court, but I could not afford the cost of representation. So, I left and now have a smashing job where I am appreciated".* ***Former deputy Chief People Officer***

One investigator said

> *"I've had a couple of HR teams, not the majority, make strenuous efforts to steer me gently towards a particular finding before I start, during the investigation and especially if the recommendations are not*

as expected. I've had a couple that came back with a bucket of track changes, and I had to say, I welcome factual correction, but not changing my outcome".

Though HR are tasked with advising managers as investigators (and as commissioners), there was a sense that because HR Business Partners were often junior to managers who commission and investigate, their advice might not be taken or they might hesitate to challenge much more senior managers. One senior whistleblower was stunned by HR's approach.

"After I blew the whistle, on serious financial mismanagement fraud, the best friend of the manager concerned raised a phoney retaliatory grievance against me, which led to a prolonged investigation in which numerous untruths were demolished, but I was still moved out of my job. HR went along with this nonsense. I was later cleared".

One interviewee said HR repeatedly failed to do the right thing and fundamentally misunderstood the law:

"The only reason I still have a job is that I have learnt how to respond to the sustained, awful, unethical, vindictive behaviour towards me and emerged stronger for it. There have been three investigations, costing loads of money and though I have been completely cleared with an apology, there is no accountability for what happened". ***Senior operational manager***

One trade union official said he had noticed a slow shift towards training experienced staff to serve as a specialist investigation team, often involving staff who had retired on a "bank" contract.

Theme Six: Discrimination

Participants described how investigators sometimes made **assumptions about the race, gender, or professional background of the staff under investigation**. In some cases, HR staff appeared to minimise the seriousness of discrimination claims or redirect the focus toward interpersonal conflict.

"I've found the levels of understanding of discrimination – especially disability and race - were pretty chronic on the whole" ***Senior HR manager***

Racism

Individuals from White or White other backgrounds primarily reported:

- A failure to address the specific issues raised
- Communication problems and evasiveness from investigators
- Using the investigation process itself as a punishment
- Procedural failures such not interviewing key witnesses and lack of proper outcome notification
- Concerns about investigation timeframes

Black and Minority Ethnic staff reported similar experiences but with significant concerns about racial bias both within the investigation process and in decision-making:

- Failure to properly address racial discrimination concerns
- Inadequate understanding of racial discrimination
- Selective interviewing of witnesses that disadvantaged BME individuals
- Pressure to accept or reject allegations without fair hearing
- Lack of impartiality from investigators

The accounts we heard suggest a systemic gap in training and awareness among those responsible for investigating discrimination without a clear understanding of the legal framework, cultural dynamics, and

institutional patterns. It was clear that race presented a challenge. One participant noted that when she said she wanted to lodge a grievance about racism:

> *"HR told me it was probably just a personality clash. They didn't even consider that my experience might be about race."*

> *"They brought in an external investigator when I finally lodged a grievance. I thought, well, she is black, so she may understand what is going on here. Her interview with me was rude, she didn't interview the witnesses I suggested, and she didn't uphold my grievance. Soon after, a leaked private summary of a culture review said the leadership who nailed me needed training on racism. So, we're off to a Tribunal now". **Clinical Educator***

It is not just white staff who tiptoe around race. BME staff do too.

> *"In one investigation, I said to a senior manager, you have mentioned race quite a lot in our conversation, but it is not mentioned in your grievance. She replied that as a senior Asian employee, mentioning racism would be career suicide. I said, well I am going to flag that this looks like race discrimination even though it is not in your grievance. This was a Trust with 55% BME staff". **Investigator***

Those supporting individuals going through investigations noted there are instances where BME individuals sought help unsuccessfully from multiple sources:

> *"I supported an individual who approached me for support and was going to be dismissed. She had been to the FTSUG, EDI Team, HR and all to raise issues of unfair treatment without success". **Chair BME Network***

There was consistency in the reported experiences of women and BME staff within investigations, notably in how **stereotypical framing** can influence the tone of interviews, the credibility assigned to testimony, and the interpretation of behaviour. Such biases were often subtle but deeply impactful. Some investigators appeared to rely on **personal impressions or informal judgments**, rather than objective analysis. This surfaced where racism was an issue, but also in sexual harassment cases. This led to findings that reflected the investigator's worldview more than the evidence.

> *"They assumed I was aggressive because I'm a Black woman. I was assertive, not hostile—but that's not how they saw it." **Senior nurse***

> *"The investigator kept referring to me as 'emotional' and 'difficult'. I don't think a man in my position would have been described that way." **Finance manager***

There were also concerns about **confirmation bias**, in which investigators appeared to seek evidence that supported a preexisting narrative while disregarding contradictory information. This was particularly evident in cases involving senior staff or organisational reputation. Despite these risks, few participants reported any efforts by investigators or organisations to **acknowledge or mitigate bias**. There was little evidence of training in unconscious bias, cultural competence, or trauma-informed approaches, though several of those conducting investigations said they had:

> *"I raised patient safety concerns but I also raised issues about racism from some senior white managers. When my grievance was investigated, the investigator did not want to spend time on the racism despite the evidence I was able to provide which was confirmed in a way by our dreadful WRES data. I produced numerous signed statements from staff about my experience (and theirs) but they were not interviewed. Racism eats you from within, even more so if those perpetrating it won't acknowledge what that are doing or allowing". **Clinical specialist***

> *"During Covid we had a black nurse who had well founded medical issues with masks. A senior white manager suggested she was making it up but doctors on the wards were more supportive and*

occupational health said she shouldn't be working. What they should have done was shield her. They wouldn't, so eventually she reluctantly took out a grievance. The Trust commissioned an investigator from a well-known consultancy and the investigation took ages. The Trust health and safety officer was not interviewed. We got the report just before Xmas with two weeks to appeal. The report described the nurse as being "aggressive" but she wasn't. I was there when she was interviewed. The report didn't mention disability discrimination and rejected racism as a factor. Eventually our appeal succeeded, and a manager had to apologise". ***Nurse and union rep***

"In my experience, staff are reluctant to name racism, and employers generally misunderstand racism unless it is really obvious. Staff who are alleged to have engaged in race discrimination are incredibly defensive, and HR will often try to call it something else. What then happens is there is a lengthy and traumatic investigation and the outcome is often a fudge". ***Investigator.***

"Racism runs deep in the NHS. A patient complained about a European health assistant having a strong accent. Actually, his accent was perfectly comprehensible to me as his rep. Instead of a quiet, informal discussion the Trust commissioned a well-known consultancy. They didn't interview the key white manager because she had left - actually it was her that should have been investigated if anyone was. The report made his accent the cornerstone of the report and said he needed to reflect on his accent. HR were really embarrassed and encouraged him to take out a grievance and he won and got an apology. But by then he was demoralised and went off sick and we never saw him again". ***Union rep.***

"Instead of dealing with racism effectively, we get nothing or we get a formal investigation in which there is pressure to refer to "poor behaviours" or "misunderstandings" rather than actually name the form of discrimination". ***EDI lead***

"I was asked to review an investigation into a member of staff whose manager said he was too opinionated and stubborn. Actually, this black employee had a lot to be opinionated about given his treatment, but him being opinionated was the focus of the investigation, not his treatment". ***Head of employment relations.***

"The investigator was supposed to be an expert in investigating issues related to race, but did not understand the terminology 'micro-aggressions' or understand the importance of looking at comparators and context. Hopeless". ***Director of Communications.***

"I've noticed that pushback is more likely from Trusts with discrimination claims than with other issues. But what can be even worse is an organisation saying thank you and doing nothing about your findings". ***Investigator***

A recurring theme in the interviews was a widespread misunderstanding of the legal framework surrounding the burden of proof in discrimination cases. Participants described how investigators and HR personnel often failed to apply the appropriate legal standards, leading to flawed conclusions and missed opportunities to address systemic issues. Several interviewees noted that investigators appeared to expect **direct evidence of discriminatory intent**, such as overt racist language or explicit exclusion, rather than recognising patterns of behaviour or indirect discrimination. One participant explained:

"They kept asking for proof that someone said something racist. But discrimination isn't always about what's said—it's about how people are treated over time".

Another added:

"They didn't understand that the burden of proof shifts once you show a pattern. It's not just about proving intent—it's about showing impact".

This misunderstanding has led to a narrow interpretation of discrimination, where only the most blatant cases are acknowledged, while more subtle or institutional forms are often dismissed. Participants also described

how HR departments reinforced this flawed approach by **setting unrealistic evidentiary thresholds**. One interviewee shared:

> *"HR said there wasn't enough evidence to prove discrimination, but they hadn't looked at the promotion data or staff turnover. They were only interested in what could be proven beyond doubt."*

This reflects a misapplication of the legal burden of proof, which in discrimination cases requires the complainant to establish facts from which discrimination could be inferred, after which the burden shifts to the employer to provide a non-discriminatory explanation. The failure to apply this framework correctly not only undermines the investigation but also likely **discourages other staff from raising concerns**, knowing that their experiences may be dismissed unless they can produce irrefutable evidence, which is unlikely, especially in a discrimination case.

Sexual misconduct

Interviewees said that although there was finally a growing awareness of sexual misconduct, policy statements were not backed up by investigation or their treatment:

> *"One good thing that has come out of this is a group of women doctors are determined that things will change and I am so pleased to use my lived experience to support them So it can happen again.* ***Resident doctor***

> *"I never expect to be sexually assaulted by a fellow doctor on Trust premises. I tried to deal with it myself but when that failed, I raised it with the FTSU and then with my line manager. An internal investigation was held. He claimed anything he did was consensual. The investigator was like a 1970s cop with insinuation about a relationship with him. I didn't want a criminal prosecution, but I did want to be able to go about my job feeling safe. The investigation concluded without an outcome".* ***Consultant***

> *"The GMC completely muddled up their decision. The doctor who assaulted me quietly left and is working elsewhere. No sign of insight or remorse. The Trust and then GMC made an utter mess of it".* ***Consultant***

Some investigators found sexual misconduct investigations difficult.

> *"A large number of sexual harassment cases occur when no one is looking, often in a room with closed doors. So, it easily becomes his word against hers. So, you have to look for evidence beyond the immediate incident to try to make sense of what actually happened rather than say "we can't tell it is his word against her"*

> *"I did an investigation into a claim of sexual harassment. It was pretty clear something must have happened, but it was not possible that it had happened as described. I have been active in work around sexual harassment, and I found that very difficult".*

> *"Sexual harassment cases can be very troubling. It is often one person's word against another and sometimes in a room where they are alone. It is made worse because the harasser is generally more senior. I think the NHS has to really think about how it does better because to raise a concern is potentially career threatening"*

Disability

A significant number of our survey respondents had a disability, though their disability in most cases was not what they had raised a concern about. Two interviewees found that external investigators (from the same organisation) both fell short:

> *"The investigator knew I was neurodiverse because it was part of my grievance that the employer had failed me on those grounds. Despite that the investigator made no allowance in the way the*

investigation was conducted especially how I was expected to respond to documents produced during the interview".

"The investigator was aware that how the investigation was being conducted was extremely distressing and was aware I was registered disabled. But they just steamed ahead. I was so upset. There was no effort at reasonable adjustment".

Theme Seven: Challenges reporting concerns about patient safety, bullying and harassment

A substantial minority of survey respondents and interviewees reported having warned of potential harm to staff or patients. Despite these warnings, some reported a lack of meaningful action or accountability from leadership, leading to feelings of frustration and demoralisation. The accounts highlighted that when concerns were raised, the response often involved deflection, prolonged internal reviews, or reclassifying issues as grievances rather than genuine whistleblowing. This pattern left many feeling unsupported and at risk, with the ultimate consequence being that serious threats to safety and patient wellbeing were neither properly investigated nor addressed, compounding distress among staff and leaving patients vulnerable. The persistence of such organisational blind spots was seen not only as undermining morale but also as a clear danger to those relying on care.

"I had warned in my protected disclosure that one consequence of the appalling treatment of staff would be harm coming to patients and as I fear there was more than one death of a vulnerable adult in our department after I was suspended. It was bizarre. I was being held accountable for not raising the concerns which led to the investigation into me, not the concerns". Senior mental health professional

"I did my nurse training 38 years ago and it taught me the values I've tried to keep to ever since. My last job was inspecting the quality of nursing and midwifery care. As I raised issues, my goodness, I got real pushback and incivility. At first, I thought is this me and could I have handled it differently? I lodged a grievance but instead I was offered a review of what I was concerned about. Then HR contacted me and said this is a governance issue and said it is a grievance after all, not whistleblowing".

"It was decided by the Board that there should be an external investigation into my concerns and how they had been handled. Terms of reference were produced which steered things towards a culture review rather than an investigation. The investigation took ages and then it was nine months before I was allowed to see just a very brief summary and the plan was clearly to kick the can down the road since it did not address the issues. No learning at all. On the steps of the tribunal their barrister offered me a large wad of money. I refused. This was about justice for the parents". National clinical expert

"All I wanted was justice for the parents and learning for the organisation. What I got was two flawed investigations and an organisation throwing money at nailing me, even though they knew there were serious problems. But my moral compass and theirs were different".

"All I ever wanted was justice for the patients I felt were at risk. I never dreamed I would be beaten up by the process I went through. It was only after I lodged an ET1 and got disclosure on key documents they had refused to let me see that I understood why the Trust suddenly offered me money to settle, because my allegations were true".

The interviews reveal significant concerns. Many participants felt that investigators' understanding of bullying, harassment, and whistleblowing was misunderstood, minimised, or reframed in ways that diluted their seriousness. A common theme was the **reduction of bullying and harassment to interpersonal conflict and poor communication.** One participant shared:

"They kept saying it was just a clash of personalities. But I was being undermined, excluded, and shouted at in meetings. That's not a personality clash—it's bullying."

Another interviewee noted:

> *"The investigator didn't seem to understand what harassment looks like when it's subtle and persistent. They were looking for one big incident instead of a pattern."*

This narrow framing often led to reports that failed to acknowledge the cumulative impact of repeated behaviours, especially when directed at staff from marginalised backgrounds. The lack of trauma-informed approaches and contextual analysis contributed to findings that felt dismissive and invalidating. Whistleblowing was similarly misunderstood. Participants described how raising concerns about unsafe practices or discrimination was often treated as insubordination or a personal grievance. One interviewee explained:

> *"I raised concerns about patient safety and was told I was being disruptive. They didn't see it as whistleblowing—they saw it as troublemaking."*

Another added:

> *"After I spoke up, it was me who was investigated. It felt like retaliation, but they said it was just part of the process."*

A Trust Chair told us.

> *"I believed I had been victimised after raising a protected disclosure and was astonished when the Trust spent a shedload of public money arguing I was not entitled to whistleblower protection. Fortunately, the Judge rejected the argument, but the retaliation for raising concerns astonished me".*

Investigating NEDs and governors

A number of staff who were Non-Executive Directors or Trust Governors had themselves been subjected to detriment, of which an investigation was a key element. How NEDs (Non-Executive Directors) and governors are investigated, and how those investigations are followed up, is particularly relevant and significant within NHS Trusts, as these individuals are intended to provide independent oversight, challenge, and accountability. When such figures are themselves targeted for investigation—especially under circumstances that appear punitive or lacking transparency—the impact reverberates far beyond the individuals concerned.

> *"I was a Trust Chair and had been an NHS chair since 2012. I saw my job as supporting the CEO, but also to hold her to account. I learnt the hard way that the principles of thoroughness, fairness, integrity and transparency came to mean nothing when, in her annual appraisal, I raised some issues of performance. In my naivety, I never imagined that the NHS establishment would drive me out when I exercised my statutory accountability powers. There was an investigation which cleared me of behaving inappropriately, but then when a Board meeting was held without me, I was not the only one concerned at how the "inner circle" of the Board were able to reach decisions arising from the report that led to my departure. Oh, and they spent a fortune trying to stop me being able to challenge them"*

Governors were another group deemed disruptive.

> *"The Trust instigated an investigation. We were suspended but not interviewed until 8 months later. The evidence we provided was withheld by the Trust, which shunted it into a confidential appendix. He who pays the piper calls the tune, and the investigator found that "on balance", we were disruptive. Actually, we were being constructively disruptive to try to stop cover-ups. We found out there was no right of appeal against the Trust decision to remove us".*

The consequences of such treatment can be profound. Not only do they create a climate of fear among those tasked with oversight, but they also erode trust among staff and stakeholders, making it less likely that concerns about patient safety, staff welfare, or organisational wrongdoing will be raised in future.

Theme Eight: Suspensions and transfers

A significant number of survey respondents and interviewees had experienced suspension or, alternatively, been moved to work or a location where they were out of sight and out of mind, often for prolonged periods when investigations were delayed by months.

A common experience was **being moved from their role or team,** not only where an alleged disciplinary offence was being investigated, but also shortly after raising a concern. While such moves were often framed as neutral or protective, participants perceived them as punitive and isolating.

> *"I was taken off my team and told it was for my own wellbeing. But it felt like punishment. I lost access to my work, my colleagues, and my reputation."* ***Psychologist***
>
> *"I was suspended. I was told the reasons would follow. I cried and cried. What was worse was that I had no idea what I was alleged to have done other than "behaviours in breach of the organisation's values". A week later, after external intervention, the suspension was lifted (without explanation), but by then I didn't want to work there anymore. I felt humiliated".* ***Consultant***
>
> *"I was suspended after some white colleagues made claims about me being a racist. I was stunned and so were other colleagues. The reasons for suspension were vague, but I worked out the incident it referred to. So, I lodged a grievance about the allegations, and pointed out that concerns about discrimination in patient care long preceded this incident, and that was the context of alleged racism – a misunderstanding or misrepresentation of what had happened. That investigation completely cleared me, but the grievance about my treatment seemed to take forever".* ***BME senior manager***
>
> *"I had worked in the NHS for 35 years, the last 19 in this Trust" Our department wasn't just a workplace; it was where most oif my friends were. To be told I couldn't speak to them about anything was cruel. It caused me a serious mental health meltdown. My reputation was trashed. I took early retirement. I never learnt what the allegations were. But my accuser won".* ***Nurse***
>
> *"I had been suspended for 18 months. The investigation found no grounds for disciplinary action but the report said I needed to go on a leadership course. 18 months paid leave during which I kept worrying about whether there was something terrible I had done I was not aware of2.* ***Finance director***

Theme Nine: Regulating the Regulators: The Nursing and Midwifery Council (NMC)

The theme of regulating the regulator is particularly pertinent in healthcare, where bodies entrusted with upholding professional standards are expected to act with fairness, transparency, and accountability themselves. However, when the actions of these regulatory organisations come under scrutiny, questions often arise about whether their own processes are sufficiently robust and impartial.

In discussions with nurse registrants, a range of concerns were raised about how investigations are conducted:

- Cases are screened by a process that does ask questions but is not an investigation. The investigation is the actual hearing, and it is run somewhat like an adversarial Tribunal;
- Racism seems to be a problem within their decision-making. The RISE culture review reports concerns raised by panel members about racism they encountered, where race might be a factor in cases, it is ignored or minimised;
- One interviewee was aware of a well-publicised case where a registrant had reported sexual misconduct; she became the subject of sustained detriment, following which serious concerns were raised about how screening and hearings failed to deal appropriately with well-founded allegations of sexual harassment;
- Cases were mentioned where a local disciplinary or grievance investigation has been completed and a hearing finished, but then there was no referral felt necessary until an ET1 is lodged, in which case the

employer ups the ante and makes an FTP referral, which may hang over a registrant for months or years;

- A further issue raised was that significant numbers of newly qualified nurses were being referred to the NMC on issues that should have been dealt with during their preceptorship;
- Cases often appeared to be considered without the wider organisational culture being a core part of the screening or hearing, for example, involving very inexperienced matrons or a culture of normalised poor care or racism;
- Another concern was that the case examiner's role is to collate the evidence to determine if a case goes to a hearing. We were told how a hearing becomes an adversarial hearing, not an investigation, often with barristers fielded against registrants acting as litigants in person
- Some private sector employers seem to use the NMC to run an investigation on issues they should have sorted locally. Other employers were reported to have used a Fitness to Practice Referral as an additional sanction for a registrant.

An interviewee who provides advice to registrants facing Fitness to Practice cases said

> *"The approach to referrals means it seems as if registrant 'screening' is not a balanced investigation but preparation for a hearing that is often deeply traumatic, adversarial and weighted against registrants".*

One investigator said

> *"I keep well away from the issue of referrals to professional regulators. That's never in the terms of reference. Unfortunately, I have seen one of my reports misused to refer someone to a regulator more as punishment that as justice".*

Theme Ten: Culture

Almost all respondents referred to the wider culture of the organisation as being crucial to the case:

> *"I have had numerous requests to conduct reviews where it is immediately apparent that the real issue is the culture. I asked the Trust why, since poor behaviour has become normalised, why have I been asked me to investigate this person (who is black) when you'd be much better off looking at how the whole department is run. They weren't interested".* ***Investigator***

Some found a culture review really helpful, but others found it was initiated as an alternative to sorting out the specific issues they had raised:

> *"Instead of dealing with a proper investigation into specific complaints, the Trust commissioned a culture review by an external investigator. They interviewed loads of people. The report went to management, but all that Unions and staff ever saw was a one-page summary. I found out they were paid £42,000 for a pointless exercise".*

> *"After 5 years of grief after I blew the whistle in the interest of patient care, the CEO finally said sorry. I burst out in tears. Over 5 years of misuse of processes that were supposed to protect staff with impartial investigation and compassionate used to beat me up. But I survived and am still here. I joined the NHS to help with patients and got treated like this, even suicidal at one point****. Senior operational manager***

> *"I had an unblemished career until a restructure and merger meant that managers and midwives with a different management culture became the leadership of our division and took exception to my raising patient safety issues. I was accused of bullying and sent off to do very basic clinical work whilst an investigation got going. I was banned from talking to the colleagues I had worked with for years and*

that really hurt me and caused serious depression. The investigation eventually cleared me but I was then micromanaged as punishment, a prelude to driving me out." ***Senior midwife***

One interviewee said a new HR director had form for "stitching people up" in her previous job – and indeed later on in her next NHS job when she had left:

"The biggest scandal not addressed was the patient safety issues I had raised with the Chair was that by counting non admissions as admissions the Trust was deliberately making avoidable deaths look proportionately much better but the estimate was that up to 400 such deaths a year were happening due to coding fiddles the only investigation into this was eventually done by the CQC but the culprits were the ones suspending other directors. I was suspended for months on end and a new investigation starts via an external investigator. So, three directors, all previously highly regarded, suspended and being investigated. Separately, PWC spent two years and completely cleared me. The other investigator finally interviewed me after 8 months and I'm accused of the very issue I had raised in the first place." ***SMT member***

Theme Eleven: Weaponising investigations

A number of interviewees had found that the issues they had raised concerns about were being used to against them.

"I raised a number of serious concerns about financial irregularities which I took to the CEO and then the Chair. I then found myself suspended for months and investigated about the irregularities I myself had highlighted with the investigator asking why I had not raised concerns when that was precisely what I had done. Talk about shooting the messenger. I was eventually cleared but not before my career was wrecked". ***District General Hospital Finance Director***

"I raised serious concerns about safety risks in maternity services. I had an impeccable record over many years, but eventually, after many months' suspension, I was accused of the very safety concerns I had raised. It was very Kafkaesque"

"I was approached by a number of staff worried about risks to patients and staff in our service. I raised those risks on their behalf through all the appropriate channels and met a brick wall. I was then suspended, and the very risks I had warned about came to happen – with patient deaths resulting. When I saw the Terms of Reference of my Investigation into me, it was almost a cut and paste of the issues I had raised with the manager who suspended me"

"The entire sequence of investigations and removal from job started when I raised patient safety concerns. The allegations against me turned out to be that there were concerns in the area where I work and I should have done something about them, But I had. I raised a protected disclosure. So, I ended up being "on trial" for something I had first flagged in the first place. The Trust of course claimed I was not dismissed for whistleblowing but because of a "breakdown in relations"

"I was warned there was a reputational risk if a report critical of our employer was not published. It was then leaked, and I was accused of leaking it – in fact I later learned who actually did leak it. I was suspended and investigated. I eventually got out of the NHS and got a better job elsewhere". ***Board director***

"I went to tell the chair about the concerns I had about financial governance and to tell him other Board members had raised patient safety issues. The chair said – and I'll never forget these words – "the problem with whistle blowing is you can't really do anything until the person raising the issue brings you the hard evidence." Completely the wrong way round of course. Next thing I know the new HR director persuaded the Chairman that I was a troublemaker and should be investigated. I was then suspended on the basis that there were issues with finance. There were indeed – the very ones I had tried to tell the Chairman about." ***Finance director***

In one case a staff member was harassed for months but without any basis to it

> *"I was PA to a Board member. I was accused of breaching confidentiality linked to my work in the local community. The allegation was eventually found to be completely false but it was used to push me out of my job and into a job where I then reported significant risks to patient safety. I was then pushed into a menial admin role. No one ever sat down with me to discuss the alleged offence until the Trust Chair intervened and it turned out there was no evidence at all. When I pushed back, I was reminded I had a little under two years' service – hint, hint. Sometimes employers don't need an investigation they just drive you down and down."* ***Senior admin worker***

> *"I was in my first job as a director. I found evidence that looked like very poor governance, costing the Trust a lot of money. I raised my concerns with the CEO as I thought I should. The meeting ended and he just blanked me after that. One-to-one stopped. I asked a fellow director what I had done wrong. He said "just don't cross the CEO. Go and apologise or he'll hunt you down. Why do you think SMT meetings are so short?" And he did hunt me down and eventually drove me out. An investigation was launched, not to examine my evidence oif bullying and harassment or shocking governance, but to find out "if my relationship with the CEO had broken down irretrievably" And surprise, surprise, it found there was such a breakdown and it was because "I was not behaving in a collegial manner" I am gone but he is still there"* ***Board director***

> *"The Trust commissioned an external investigator and she was actually very good. She found none of the allegations against me were true and recommended that the department needed a culture review because she felt my treatment was part of a wider problem. The Trust then commissioned a second external investigation into fabricated allegation from a different external investigator (surprise surprise) relating to a patient death that actually happened when I was on three weeks annual leave abroad. It was complete nonsense but I was required to work from home for weeks and weeks. The external investigator found I needed to undergo communications skills training. I never saw the report, only the decision. I left. I later learnt this firm of investigators had been used before with similar results."* ***Senior clinical leader***

> *"A small external investigator was brought in. It turned out he had been sacked from his previous job but he knew how to draft a pleasing investigation report. He appeared to take no notes nor record the interview during three interviews. He interviewed none of my suggested witnesses. This did not prevent him producing an enormous report consisting primarily of senior management statements. I lodged an ET1. But I couldn't afford the £70,000 I was quoted for a barrister so I left"* ***EDI lead***

> *"I have been a midwife all my life and gradually rose in the ranks with no blots on my career. When a new director was appointed, I slowly realised I was being undermined. Out of the blue allegations were made and I was banished to a corner of the trust. I went of sick in distress., It was ten weeks before I heard anything. A well-known consultancy was appointed as investigator. I never saw terms of reference until after the interview. I was then told it was just a fact-finding investigation. I was told I was allegedly bullying staff but it was so vague it was difficult to respond. When the report arrived, we couldn't work out what it was recommending but it cleared me. But I was put on a "development plan". The whole purpose seemed to be to humiliate me. I left. I couldn't bear it anymore."* ***Director of Midwifery***

Retaliation against staff who raise concerns was a prominent and troubling theme throughout the interviews. Many participants described experiencing punitive actions, exclusion, or reputational damage after speaking up—often with little or no effort by the organisation to prevent or address such retaliation.

> *"A couple of days before my interview a friend of the director came to see me. He leaned over my desk (he was a big fellow) and said very softly "if you give evidence that loses (the director) his job you will definitely lose yours"""* ***SMT member***

"I learned how ruthless an employer can be and how useful a shoddy investigation can be to such an employer. My problems began when I raised with the CEO that a director had been sharing nude pictures of himself on a staff WhatsApp group. An HR business partner showed it to me and was disgusted. I raised it with the new female CEO; she dismissed it as "clinical humour" and things went downhill from there. The CPO asked me "are you sure you want to stay till the end of your contract?" I am an Asian woman and the entire senior management team are white. The investigation rejected my allegations. Other BME staff were outraged. I became ill as the cumulative impact of my treatment wore on and left." ***EDI and OD practitioner***

"I've spent my life in the NHS because I care. My wife works elsewhere in the NHS. I see it like this. The suspension is the action. The investigation and distress are what follows and they expect you to cave in after 18 months or so due to the stress and impact on family. They offered me 6 months' pay to go quietly. But I wouldn't. The whole process was a hit job, which dragged on forever. So, I lodged an ET1 and when I got the various documents I requested it was clear I would win, A new Trust Chair came in and asked for a legal opinion of my case. They said I would win. So, I was completely cleared. God knows how much the whole exercise cost them, and for nothing". ***Finance director***

"The investigation failed to do what its terms of reference required, there was a failure to call my witnesses and long delays, because there was absolutely no evidence. But it was too dangerous for me to stay because the micromanagement I was now subjected to was bound to lead to another investigation."

Retaliation against those raising serious concerns impacts the entire Trust culture

"What was the impact of their failed campaign against me and others? A hole in the Trust finances, a cover up of hundreds of avoidable deaths, careers ruined and the creation of a toxic culture in that Trust that is now so embedded that covers ups probably seem normal. Investigations are part of the punishment. Everyone now knows even three years later that you should never ever get involved with raising complaints or trying to improve anything. Don't do it. Keep your head down. Stay out of it. And those who drove this culture have moved on to even better jobs." ***Board director***

Another participant noted:

"After I raised concerns, I was suddenly under investigation myself. It felt like they were trying to silence me."

A significant number of survey respondents and interviewees reported retaliation, which may include accusations of incompetence or misconduct that arose only after the individual raised concerns, or a shift in management style that involved marginalisation, exclusion, micromanagement, or humiliation following the concerns being raised.

Few participants reported that their **organisation had taken any formal steps to prevent retaliation**. Even when retaliation was reported, responses were often inadequate or dismissive. Some participants described how their concerns were minimised or reframed as misunderstandings. Others were told that retaliation was difficult to prove and, therefore not actionable.

"I told HR I was being targeted after raising concerns. They said it wasn't retaliation without carrying out any investigation"

"I was maliciously accused of incompetence and subjected to a conduct and competence investigation after innocently asking questions about the culture of the team".

"The key piece of evidence against me was a claim that I hadn't discussed the case with them. But I produced records that showed I had. These records somehow disappeared from the Trust files. After I was cleared by the investigation, I said I wanted an apology. Instead, I was told I could be heading for

capability process unless I did a deal and left. I couldn't bear another couple of years of battling the Trust so I got a neutral reference and left with an NDA. I managed to get a job at another Trust and thrived. But I still get flashbacks." ***Senior clinician***

Theme Twelve: Conflicts of interest

Some investigators noted a potential conflict of interest:

"When you are an investigator, you always have it in the back of your mind that you are making a living from this work and if you make findings that upset the employer, that might be your last commission there. There is always a risk of confirmation bias once a seed is planted in your thinking".

"It is really easy to be nudged towards assumptions and perceptions by the commissioning organisation. You have to really be aware of the risk of bias".

"I'm very conscious of potential conflicts of interest – I include HR in this and always have a second person with me in interviews to ensure I have captured what I need to. I try to be constantly aware of the risk of bias rather than ignore it. I am conscious of the damaging effect of delays so my notes are turned around in two days, always".

Another significant barrier may be the **influence of organisational hierarchy and internal politics**. Several participants described how senior leaders and HR departments exert undue influence over the investigative process, often prioritising reputational protection over truth-seeking. One participant stated:

"HR are seen as firmly on the side of the employer, and I see individuals getting shut down."

This perception of bias and lack of independence erodes trust in the process and discourages staff from raising concerns.

"I raised a series of really serious concerns about patient care – almost all flagged to me by staff I was professional lead for – I had over a dozen separate staff raising written concerns. I also raised concerns that the way BME staff were being treated was very unfair. The decision to suspend and investigate me was taken by a panel led by the same manager I had tried to raise these very concerns with". ***Senior clinician***

"The CEO and the external investigator had both worked together some years previously, and the CEO insisted on being the Commissioning Manager. I didn't see the terms of reference until several weeks after the investigation started, and they didn't reflect my grievance but were more about my "inappropriate behaviour". The CEO's fingerprints were all over it. So, I ended up being the subject of the investigation not my allegations of harassment". ***Medical consultant***

Theme Thirteen. Collusion

Two forms of collusion were raised – staff accused of colluding to raise concerns, or of colluding against someone who raised a concern or faced an investigation.

The possibility of collusion in group allegations that led to individuals being investigated was raised in several interviews, but participants felt that organisations failed to investigate these allegations.

"I am now aware of the case of the CEO of the Countess of Chester, where the judge described a 'conspiracy' by Directors to get her. I could see similarities with my own case".

A number of respondents noted a **defensive posture** throughout, where the focus shifts from the substance of the allegations to questioning the motives of those raising them. Such framing was perceived as discouraging and isolating individuals who might otherwise feel supported.

Few participants reported any **structured or fair process** for assessing whether group allegations were coordinated or coincidental. In most cases, collusion was assumed in the absence of evidence when concerns about management were raised. However, it was dismissed when collusion was alleged, even when the collusion involved management. We were told of a failure to recognise that **patterns of behaviour that undermine staff who raise concerns**—especially in cases of bullying, discrimination, or unsafe practices—are often best understood through multiple perspectives.

> *"They didn't ask why so many of us had similar stories. They just said it was suspicious."*

A number of interviews and survey respondents believed collusion was a factor in their cases.

> *"I was a litigant in person, and after I had to go to court, the judge concluded that a paralegal had convened a meeting of Trust witnesses to agree how to handle the case". **NHS maintenance worker***

Numerous interviewees were convinced that "off-the-record pressure" had been put on investigators to change their reports. This was hard to prove, of course, but one interviewee did discover this

> *"The investigation failed to uphold my claims of racism but instead recommended mediation to see if the breakdown in relationships can be resolved. A year after I left, I learned that the Trust had insisted to the investigator that being inserted at the last minute." **Senior finance officer***

Other interviewees described how group complaints were dismissed or undermined by suggestions that the individuals involved were coordinating to cause disruption. One participant shared:

> *"They said we were all friends and had planned it together. But we came forward separately, and we had different experiences of racism. It wasn't collusion—it was a pattern. Some people might do that but we certainly hadn't.*

Where staff or managers were alleged to have colluded against an individual facing investigation, it was seen as almost impossible to prove this without going to court, where witnesses would face cross-examination and where documentation denied in a local investigation might be produced. In fact, several participants did just that and through the process of discovery discovered a range of evidence of collusion:

> *"I was convinced that a couple of the witnesses against me had been nobbled but just couldn't prove. When I put in a request for emails about me from the CPO and the CEO hey presto, what I suspected turned out to be true – the allegations against me had been strongly encouraged by a Board member who then authorised an investigation against me. Shameful really". **Senior manager***

Theme Fourteen: Reports and reporting

A majority of the interviewees (though not all) found real problems with the final reports.
A key concern was that those who had raised a grievance, whistle blow, or were subject to a disciplinary investigation seldom received the complete final report. Most common was a summary report but where this was disputed, the main concern was that, as one person put it

> *"It was like being given the answer to a maths problem but without the working out to show how it was reached",*

Three interviewees reported that they never received a summary report. Instead, they got the decision and, in two cases, a video call in which the investigator talked through some of the issues. In another case, there was no mention of the key issue in the grievance that had prompted the report because the investigation was closed without the person who was the subject of it being interviewed.

It was generally recognised that there might be grounds for redacting names to protect privacy. However, several described reports, which were very difficult to follow due to the extent of redaction, one described stated:

> *"Trying to work your way through a whodunnit where the key bits of evidence were tippexed out was impossible. There may be good reasons to redact names, but if the organisation is serious about improving its culture, the failure to do more than set out a decision without evidence or reasons felt like justice denied and little learnt".* ***Trade union representative***

Interviewees accepted that there might be a need for some limited redaction for confidentiality reasons, but some described something much more extensive.

> *"Whole pages were redacted, and it was impossible to make sense of the findings from what was left unredacted"*

Several participants described how only evidence excerpts that supported the organisation's position were included in the final report.

> *"They quoted one line from a witness who supported me, but ignored the rest of their statement. It felt like they were cherry-picking."*
>
> *"The report did summarise the issues quite well but then described my treatment as "poor management behaviours" not as the racism the report described".* ***Senior nurse***

One employer had kept key recommendations of an investigation quiet, but accidentally sent them to the interviewee.

> *"I was just given a letter setting out the findings which cleared me. But the full report was later accidentally emailed to me and contained a long list of recommendations for management which had not been done. It came in handy at the next meeting with HR and my director".* ***Senior manager***

Some investigators (primarily two "better single-handed ones") were felt to have taken great care over the final report. One single-handed investigator put it

> *"If I ever was hauled in front of a fancy competent barrister, I would want to be able to defend every single sentence, comma and full stop".*

In a number of cases, the reports were described as shoddy. One report of several hundred pages made so many factual errors that the person being investigated was not surprised that there came a point where the organisation decided to settle rather than defend the report in court.

Theme Fifteen: Outcomes

Outcomes of both a fact-finding investigation or of an investigation to determine if there is a case to answer might be that the case is closed, or that action short of a formal response might be taken (training, mediation and so on). However, the outcomes might be that the case proceeds to a formal hearing with a management panel. A good number of the interviewees' cases had not proceeded to such a panel, which itself was an

interesting finding. Of the interviewees who had been the subject of an investigation, only one-third of cases proceeded to a formal hearing. The reasons for this included:

- the investigation found there was no case to answer; the investigation found there was a case to answer on some issues, but it was then resolved without going to a panel;
- the investigation led to the person subjected to an investigation leaving the organisation – often through ill health resulting from the process or with a Non-Disclosure Agreement.

In several instances, following the formal hearing, individuals opted to pursue further action through the Employment Tribunal, highlighting ongoing dissatisfaction with the internal processes and outcomes.

Another concern was that recommendations the staff members welcomed were often not implemented. One senior clinician said:

> *"I was told I needed to go on a course but my manager (who had got me suspended) refused to fund it"*

One concern was that even when the investigation found that the allegations were not upheld, recommendations were made that were either inappropriate or unwarranted. Mediation was a common recommendation but often without any understanding of the conditions in which it is appropriate or likely to work. It was often seen as an avoidance of a problem.

> *"Mediation had been recommended with the manager who had caused me to be suspended for 17 months. She wouldn't apologise despite none of the allegations against me being upheld. I took part anyway because otherwise I thought I'd just been seen as an angry black woman. When you are a woman of colour, you don't want to be seen as the problem, so you just become compliant Predictably. the manager refused to acknowledge my pain and her body language was rigid. For me it was revisiting the trauma of the suspension. Soon after she set out to humiliate me again".* ***Senior clinician****.*

> *"I was commissioned to facilitate mediation. I'm amazed how people sometimes miss the obvious in mediation. In one team, things were pretty messy. It was obvious to me within minutes that this team member labelled as difficult actually had ADHD and it was not being acknowledged by anyone".* ***Investigator***

Communication skills training was another recommendation, often greeted with scepticism:

> *"My appraisals were full of praise for my ability to motivate my team and to communicate clearly and effectively. The external investigator kept pressing me on how I behaved at divisional meetings where I was often the only one raising concerns about staff behaviours – our bullying data was through the roof. So, they recommended a comms skills course".*

Settlement payments

The Treasury sets limits on what NHS employers can offer as a settlement. This limitation often poses significant challenges for both employees and employers during settlement negotiations, leaving some parties dissatisfied with the outcomes or feeling that a more appropriate resolution could have been achieved if greater flexibility were permitted. The broader impact is a sense of missed opportunities for fairer or more constructive resolutions, which adds to the complexity and emotional strain experienced by those involved in lengthy disputes and investigations.

> *"I've been surprised a couple of times that a negotiated settlement had not been offered by the employer, but I do know that in one case the Treasury limits of what can be offered were seen as a real problem by the employer".* ***Investigator***

> *"They only settled when they were told by their lawyers, I was likely to win at an ET. They accidentally copied me into their email – very embarrassing and very useful"".* ***Senior manager***

Non-disclosure agreements

Non-disclosure agreements (NDAs) present several challenges in the context of workplace disputes and settlements. While intended to protect the privacy of individuals involved, NDAs can also be perceived as tools to silence staff and prevent important issues, such as patient safety or organisational misconduct, from being discussed openly. This often leads to feelings of mistrust and frustration among employees, who may believe that NDAs act as gagging clauses rather than safeguards, and further complicates efforts towards transparency and shared learning within organisations.

> *"I have mixed feelings about them. They can be used to silence important information, but they can also be useful individuals. I think it should largely come down to what the person being offered an NDA wants, but if there is wider learning (patient safety) then I think it is important that there is never an NDA on those issues. In practice, at present staff being offered an NDA believe it really is a gagging clause.* ***Trade union representative***

Long term consequences

Three longer-term consequences stand out from the range of quotes from survey respondents and interviewees

- For members of staff, the damage to their health and career could be long-lasting. They were disillusioned not only with their immediate managers but also with the NHS as a whole for permitting the treatment they had undergone. More than one interviewee recounted how their marriage had fallen apart (or nearly done so) under the stress. There was a serious loss of trust among those who felt that colleagues had let them down.

- For the culture of the organisation/ Responses described how it had affected their faith in whether the NHS had fair processes – both for raising concerns and when they were accused of shortcomings. This was perceived as worse because almost no one reported open, shared learning from investigations.

- For many individuals. They could not understand why the concerns they had raised, or the issues that led to a disciplinary investigation, could not have been sorted informally at the very beginning

Theme Sixteen: Trade unions

Participants' experiences with trade unions were mixed. Some were satisfied with the support and advice they got.

> *"My union rep was brilliant. I have nothing but praise for them. I've heard stories about really poor representation but my rep was very knowledgeable and supportive before during and after the investigation".* ***Nurse***
>
> *"My trade union official was helpful, but I had to do almost all the work".*
>
> *"The one thing I would say is my union rep was brilliant in trying to get a just outcome following my sexual assault****". Consultant***
>
> *"I think my official meant well but was so overworked I ended up having to give up waiting for advice".*

Other respondents were very critical:

> *"I found my union official beyond hopeless. Almost impossible to get hold of and too keen to get a settlement rather than unpick the poor behaviours that had led to so many good people leaving or just keeping their heads down"*

"I was so disappointed. Even when I was sent a document from the employers' solicitors by mistake saying I was likely to win at Tribunal, they refused to support me or use that to negotiate the right outcome. I just couldn't understand why. So, I lodged my own ET1 and its ongoing" ***Senior manager***

"As an investigator I am surprised how poor many officials are in tackling issues of discrimination. I don't know if it is ignorance or fear it is complicated, but I often have to pick up issues they should have done".

"There are some really good reps and officials of course but overall, I'm not impressed. Local reps often don't have the level of skill and experience needed. Some full-time officials are very good but most are too keen to settle rather than get justice. Sometimes this is because they know the harm an extended process can cause but often because they are snowed under. Worst of all is the arbitrary 50% rule that unions have which prevents important cases being heard. In some types of cases – especially discrimination. and whistleblowing - the chances of success are always going to be low but the threat of running a case may get a decent settlement". ***Lawyer***

"I was so disappointed with the union who having said I should lodge an ET1 were so slow and I had to lodge it myself which meant I later ran out of funds to -pursue the case". ***Nurse***

Theme Seventeen: Harm and welfare

Workplace investigations and related events often have a profound, detrimental impact on the well-being of those involved. Participants consistently described feelings of isolation, anxiety, and emotional distress resulting from the investigative process itself. Many reported being removed from their teams or placed on leave, which exacerbated their sense of punishment and alienation. Others said their managers became distant. One participant noted those affected:

"Feel they've already been treated badly. That's why they're raising the complaint. And now they've been punished again by being moved or put on garden leave and stuff like that." ***EDI lead.***

This removal from familiar environments and colleagues not only affects emotional wellbeing but also undermines trust in the organisation. The perception that raising concerns leads to punitive outcomes discourages future disclosures and fosters a culture of silence. The length of time from raising a concern or facing an allegation is a key driver of ill health.

"The disciplinary investigation lasted months and triggered serious mental health issues and worsened a disability I already had. The investigator first disputed that I had a disability despite my GPs evidence and then failed to mention it once in her findings. I actually had a breakdown after that."

Career progression is also adversely affected. Several interviewees described being overlooked for promotions, excluded from key initiatives, or demoted following investigations. Many participants' health was impacted:

"I kept thinking, am I doing something wrong? It started to impact my health considerably. I started questioning my own professionalism, who I was, what I was doing. I considered suicide"

"I didn't realise until the nightmare of 27 months of investigations was over how badly my health and my family were affected. I would never raise concerns about patient safety again. Just keep quiet. That's what this organisation wants. All I wanted was curiosity, compassion, integrity. I got none of them". ***Consultant***

"I went off sick and was really mentally affected by my treatment. I was invited to sing at an event – that's my hobby – and the Trust immediately accused me of breach of contract for working when sick when I was trying to pull myself together. I never did find out why I was treated so badly". ***Senior admin worker***

"I am a strong person. But I ended up in tears at every meeting because my seniors kept saying "are you sure", you must stop getting excited, youre seeing things out of proportion. But I wasn't. Every BME member of staff in our department felt the same but I was the one raising my head".

A common concern raised by those who seek to provide support to those in investigations was the huge **time commitment** it might involve, the impact on their own health and for some, the perceived risk of giving support:

- Managers who took on the role of investigators without backfill
- Freedom to speak up guardians' who went beyond just signposting cases
- EDI leads who gave support and advice to staff involved in investigations
- Union reps – many of whom had minimal time off
- Investigators who sat through traumatic evidence
- HR staff who were quietly giving encouragement they couldn't tell their colleagues about

One EDI lead said:

"I found it very distressing personally watching what was happening to the person I was accompanying to meeting. My sleep was affected".

A trade union representative said

"I'm not sure the organisation realised how their shoddy behaviour towards the person I was supporting damaged the trust reputation for lots of people here. But the staff survey says I'm right".

In most cases, there was no acknowledgement of the risk, no protective measures were taken, and no follow-up was conducted to ensure the individual's safety or wellbeing. One interviewee stated:

"There was no support, no check-in, nothing. I was left to deal with the fallout on my own."

Theme Eighteen: Reflections after the process

The investigation process profoundly shaped participants' perceptions of their employers, often leading to a significant deterioration in trust, respect, and emotional connection to the organisation. A common sentiment was that the organisation's or individual's **reputation** seemed more important than seeking the truth or supporting staff. One participant stated:

"I used to be proud to work here. Now I feel like just another problem they wanted to manage quietly."

Another added:

"They talk about values and inclusion, but when it mattered, they didn't live up to any of it."

These experiences led many to question the authenticity of organisational commitments to fairness, diversity, and staff wellbeing. The contrast between public messaging and internal practices was described as stark and damaging. Some participants reported that their view of the employer shifted from **trust to caution**, leading them to feel they needed to protect themselves rather than rely on institutional support. One interviewee shared:

"I don't trust HR nor those colleagues who walked away when I was in trouble. Even though I was cleared, I document everything and avoid raising concerns unless I absolutely have to."

Others described a **complete breakdown in their relationship with the organisation**, leading to resignation, disengagement, or mental health struggles. The emotional toll of the process was compounded by the perception that the employer failed to act with integrity.

> *"I gave years to this organisation. After the investigation, I felt disposable."*

In rare cases, participants maintained a neutral or pragmatic view, acknowledging flaws in the process but separating them from their broader experience of the organisation. However, these perspectives were exceptions.

The interviews offer a rich reflection on the lessons learned by individuals who have experienced workplace investigations. These lessons are often hard-won, shaped by emotional strain, professional setbacks, and a deep reassessment of organisational culture and values.

Participants emphasised that even when outcomes were unfavourable, a fair and respectful process could preserve trust. Conversely, when processes were opaque or biased, the damage extended beyond the individual case. One participant shared:

> *"I could have accepted the outcome if the process had felt fair. But it didn't. That's what stays with you—the feeling that you weren't heard."*

Another reflected:

> *"I learned that the process matters as much as the result. If people feel respected and understood, they can move forward. If not, it leaves scars."*

Many interviewees also described a **loss of faith in organisational integrity**, particularly when investigations appeared to protect senior staff or reputational interests over truth and justice. This led to a broader lesson about the need for cultural change and leadership accountability.

> *"I used to believe in the values of the NHS. Now I see how easily they're set aside when things get uncomfortable."*

Others spoke about their own **personal growth and resilience** that emerged from the experience, despite its challenges. Some found strength in advocacy, peer support, or union involvement, and expressed a desire to help others navigate similar situations.

> *"It was the hardest thing I've been through, but it taught me to stand up for myself. I want to make sure others don't feel as alone as I did."*

> *"The one good side effect of the never-ending investigations and harassment was that I eventually decided I'm not having this and starting learning how to respond. I created timelines. I taught myself how to prepare two ET1s, I learnt how not to fear very senior managers. I learnt how to make information requests which were very revealing and helpful and eventually I won".* ***Senior manager***

> *"Unfortunately, I have seen staff – often but not always BME staff - referred to the NMC when the management motives for doing so are often unclear to put it mildly".* ***EDI lead***

Without exception, those who were the subject of investigations said how unprepared they were for what actually happened

> *"I felt like a rabbit in headlights. I had no idea it was going to be so difficult and stressful when all I wanted was to be heard and achieve justice."*

Theme Nineteen: The costs of investigations

The cost of the processes people went through was a constant issue.

> *"I did an FOI to find the cost of the "independent" consultancy that had done the investigation. It was just under £40,000. Talking to other whistleblowers, this seems to be the going rate"*
>
> *"When you add up the cost of the investigation, the cost of my ill health and time on long-term sick, the cost of their legal advice and the GMC involvement, the cost of not dealing with it properly must be well over £100,000".*
>
> *"We discovered by accident that the Trust had been charged £42,000 – money for old rope".*

Lawyers and consultants

> *"I've noticed that the Trust lawyers (internal or external) seem to have become more involved in cases than a few years ago. I don't know if that's just me noticing this., But whilst it can be helpful to stop an organisation blundering into a big legal mistake it often means the issues are seen through a legal lens not a culture lens which is generally unhelpful.* ***Investigator***
>
> *"The legal firm our Trust used behaved disgracefully. I lodged an ET1 and was representing myself. So, they wrote to say that unless I admitted I was dishonestly making my claims about my accident at work and dropped my claim they would press for thousands of pounds in costs. When we got to court the lawyers were battered by the judge. I won but it was never about money it was about justice. We did an FOI and discovered that the Trust's legal costs were greater than what I eventually was awarded."* ***Senior general manager***
>
> *"As a lawyer who does investigations, I have been asked to review a number of other investigations. When I see what the Trust has been charged for the quality of work, it is sometimes astonishing.*

Personal cost

> *"You can't put a price on what the whole process did to me and my family, just talking to you now makes me tearful".*
>
> *"You lose your self-confidence. I see shadows everywhere. Trust has gone. So, I left".*

Improvements Staff Would Like to See

Across the interviews, participants offered thoughtful and constructive suggestions for improving how organisations handle concerns and allegations. These recommendations reflect a desire for fairness, transparency and genuine accountability.

One of the most frequently cited improvements was the need for **clear, consistent, and transparent processes**. Participants emphasised that investigations should follow a standardised framework, with well-defined terms of reference, timelines, and communication protocols. One interviewee stated:

> *"There needs to be a proper process that everyone understands—not something that changes depending on who's involved."*

The other major takeaway was: don't initiate **a formal investigation unless it is clear there is no alternative**. Many participants couldn't understand why the issues were not discussed informally in a safe place with them.

> *"I didn't want to lodge a grievance; I just wanted safer care to be provided. But no one listened".*

Participants also called for **better training for investigators, HR staff, and managers**, particularly in areas such as discrimination, unconscious bias, trauma-informed approaches, and whistleblowing. Many felt that current practices lacked sensitivity and legal understanding.

> *"If you're investigating racism or bullying, you need to understand what that looks like. It's not just about ticking boxes."*

There was strong support for the use of **truly independent investigators**, with safeguards to ensure the commissioning employer does not influence them. This includes transparent contracting, oversight mechanisms, and, wherever possible, public reporting of outcomes for learning.

> *"External investigators should be accountable to an independent body, not just the trust that hires them."*

Participants also recommended **better support for staff during and after investigations**, including access to counselling, peer support, and union representation. The emotional toll of the process was described as significant, and many felt abandoned by their organisations.

> *"There should be someone checking in with you—not just leaving you to deal with the stress alone."*

Finally, interviewees called for a **cultural shift** in how concerns are viewed and addressed. Rather than treating complaints as threats, organisations should see them as opportunities to learn, improve, and build trust.

> *"People raise concerns because they care. If you punish them, you lose good staff and damage the culture."*

A substantial number urged NHS organisations to stop using investigations themselves (especially the length of time they took) as a form of punishment, and to **act against managers who sought to undermine or victimise staff who raised concern**s or fought disciplinary allegations, and instead to try to sort things out before they got entrenched.

> *"As far as I can see from my own experience, many of the cases that end up in formal investigations don't need to. They waste vast amounts of time, cost a load of money, and no one learns anything from them. Just stop it". **Head of employment relations***

Key recommendations from survey respondents and interviewees

1. **Develop a National Code of Practice** for workplace investigations, including standards for transparency, independence, duration, and procedural fairness.
2. **Emphasise informal early discussions wherever possible**
3. **Mandate specific training relating to cultural awareness/anti-discrimination** for investigators, HR staff, and commissioning managers.
4. **Establish independent oversight bodies** to review investigations involving whistleblowing or discrimination.
5. **Ensure access to all relevant data**, including comparator information, personal files, and rebuttal evidence.
6. **Protect whistleblowers from retaliation** by implementing clear policies, conducting regular monitoring and holding anyone victimising someone raising concerns accountable
7. **Introduce peer review mechanisms** for investigation reports before finalisation.
8. **Track post-investigation outcomes** to assess long-term impact on staff wellbeing and retention
9. **Improve union accountability** and training to support staff effectively.
10. The **duty of care** to everyone (staff and patients) should be central to everything

OVERVIEW OF FINDINGS

The respondents and interviewees in this survey were a self-selecting group. The large majority were NHS staff who had been involved in an investigation as the subject of an investigation. It was no surprise, therefore, that respondents would hold a critical view of their experience, as reflected in their survey responses and interviews. A small number were investigators, commissioners and HR staff.

What emerged was that the experience of staff who had been subjects of an investigation closely aligned with the literature describing the potential gap between "good" investigatory practice and the actual practice experienced by them. The literature scan also examined the extent to which investigations were, in the words of several respondents and a couple of investigators, used as "being the punishment itself".

Was an investigation necessary?

An emerging theme in research and in initiatives such as just and learning culture has been an emphasis on the benefits of early informal interventions in workplace conflicts. One theme raised by numerous survey respondents and interviewees was that the issues they had raised, or that had been raised about them, should (and could) have been addressed at an earlier, more informal stage. A number expressed bemusement that an early informal discussion had not taken place to at least explore the concerns or issues raised. Clearly, some issues might require a formal investigation, notably serious behavioural misconduct or serious patient safety issues. However, it was unclear who benefited from many of the lengthy disciplinary processes, or what learning was derived from the weaponisation of investigations against staff who had raised concerns or who were eventually cleared of allegations.

Learning or blame?

The emerging view within NHS organisations is that initiatives such as a Just and Learning Culture could significantly avoid avoidable harm, save substantial sums of money and be more likely to lead to learning rather than blame. Survey and interview evidence suggested that almost no investigations have explored what the subjects believed could (and should) have been learnt from their experiences and evidence. Moreover, the reports themselves were

- often so brief, often did not include any clear rationale for the fact-finding or recommendations, and
- rarely explained what learning there might be for the individual or the organisations from the events investigated.

Indeed, where a rationale was provided, it appeared unclear whether the evidence supported this. None appeared to have considered whether suspension or any other sanction during the investigation was necessary.

Did the investigation meet "good" standards of practice?

There is extensive literature outlining the principles that should underpin an effective and fair investigation. Our original intention was to focus primarily on the extent to which those standards were implemented in practice. All investigators interviewed assured us that they were aware of the principles that a fair and effective investigation should follow, and two of the one-person investigators described in some detail the measures they intended to take to ensure adherence to these principles.

What emerged from the survey respondents and interviewees was a pattern of shortcomings that in significant measure frequently departed from those principles. This was experienced in several ways.

Firstly, in some cases, **basic administrative procedures** were flawed. Serious concerns were raised about the quality of notetaking in certain instances. Some investigators used transcripts that could be verified, while others took detailed, reliable notes that witnesses were invited to review. In other cases, note-taking appeared inconsistent in quality, and in two instances, those notes were not checked (and in another case, not shared) with the subjects of the investigation.

Secondly, both survey respondents and interviewees repeatedly reported that their **investigator failed to explore what they regarded as crucial evidence**. Particular concerns were expressed that the balance of witnesses interviewed disadvantaged the subject of the investigation, and a belief that there was a failure to insist on subjects of an investigation having access to what were regarded as reasonable requests for information about allegations which they were expected to respond to.

The barriers to obtaining relevant information appeared to be reasonable access to available and relevant data, including WRES, WDES, and Freedom to Speak Up data. Subject Access Requests were responded to outside the statutory limits, even when the request appeared proportionate and reasonable. In several cases, this was confirmed when the process of "discovery", which enabled lodging an Employment Tribunal claim, revealed evidence that interviewees felt would have decisively influenced (to their benefit) the findings from their investigation. In two cases, it appeared relevant data had been deleted.

Thirdly, there was a prevailing view that many investigators did not acknowledge the power imbalance faced by staff who raised concerns or were subject to disciplinary investigations. This surfaced in numerous ways. One was that where formal sanctions were in place (suspension or other sanctions), many respondents and interviewees reported no acknowledgement of the stress resulting from the process, either during interviews or in management attitudes towards them throughout the process. Another concern raised was that a number of interviewees remained unclear until the actual interview (and sometimes afterwards) about the specific allegations they were responding to. Another concern raised was that it appeared normal for the subjects of a disciplinary investigation not to have sight of the witness statements of those making allegations against them, such that they were expected to respond without knowing the context (or even the date) or the detail within such allegations or counter-evidence.

Fourthly, several respondents and interviewees raised a concern that insufficient attention appeared to be paid to whether scrutiny of their alleged actions or behaviours might benefit from consideration of the **wider culture of the organisations** or whether they were responded to by management in an equitable way.

Fifthly, there were some reports of investigators asking questions which suggested they misunderstood **the legal framework** they should be aware of. Thus, in some cases, interviewees were asked if they felt a specific incident should be considered as "motivated" by racism, intended" to be bullying or harassment, when it would be unlikely the interviewee could usefully comment and unclear why "intention" was necessarily relevant if harm was caused. There appeared to be a limited understanding by some investigators that contextual data (such as Trust data on discrimination, speaking up, and patient safety) might be an integral part of investigations. We noted that almost no internationally educated staff responded to the survey, and only one volunteered to be interviewed, which may suggest a heightened reluctance by such staff to come forward with concerns about their treatment due to their background, a pattern noted in the literature scan.

Sixth, specific concerns were expressed by those raising concerns about **discrimination** or where staff believed that allegations against them, or the manner in which they were investigated, suggested evidence of bias. From interviews, several interviewees reported a reluctance or inability to recognise acts of detriment as racism, and a reluctance to seek corroborating evidence when there were no witnesses to an alleged event (a common

occurrence), with two participants being asked if they were sure they "were not imagining" what the meaning of an event was.

Seventh, some respondents and interviewees said their experience was that an investigation appeared to be **focused more on the evidence of "guilt" and** less on the evidence to the contrary. That was felt to be especially evident in the commissioning of investigators perceived as having a conflict of interest, and sometimes in what was experienced as an adversarial approach during the interview.

The literature scan extensively documents the **risk of bias,** which can impact all aspects of an investigation, and we were provided with numerous apparent examples where bias may have intruded, quite separately from bias where discrimination might be a factor.

In summary, the standards for investigation set by Pillar, summarised in Francis, and explored widely in the literature scan, seemed to be repeatedly, though not always, departed from. That conclusion was validated by interviewees sharing documentary evidence, including actual reports and emails, which appeared to confirm their verbal evidence of such shortcomings. Interestingly, whilst some investigators appeared not to recognise such evidence, others did, notably two one-person investigators who had been asked to review investigations undertaken by investigators from larger organisations.

We concluded that there was substantial evidence that employers cannot gain assurance that an investigation – whether undertaken internally or externally - could be relied upon to meet the standard they should expect without careful scrutiny of both the process followed and the rationale for its conclusions.

To what extent was the investigation itself experienced as a form of detriment?

One theme that emerged from the literature was the risk that an investigation itself might be weaponised (intentionally or otherwise) to the detriment of the subject of the investigation. There is extensive evidence that an investigation – and the processes leading up to it – may cause harm, primarily to the person who is the subject of the investigation but also, potentially, to witnesses, the investigator, and those providing support to the subject of the investigation. Each of those risks was borne out by our survey and investigations. The most obvious risks are to the health, well-being, and career of the subject of the investigation, and these risks are considered below.

Survey respondents and interviewees provided extensive evidence, reflecting some research, that the investigation itself had damaged the **psychological contract** between the subject of the investigation and the employer, irrespective of the outcome. Staff who are the subject of an investigation become isolated – often barred from speaking to colleagues about anything possibly related to the investigation. Both staff who were being investigated following their raising concerns, as well as those being investigated under a disciplinary process, had become fearful of further consequences.

Such a detrimental impact may well be compounded by other steps management may take prior to or during the investigation. The most well-known detriment is suspension or other measures that remove staff from their normal place of work or role. Though the suspension is no longer regarded by Employment Tribunals as a "neutral act" and is certainly not experienced as such, such measures were reported as fairly common amongst our interviewees and respondents, especially amongst the more senior staff. Whilst there may be exceptional circumstances where suspension is an appropriate step (such as where there is a risk of serious harm to patients, self or colleagues), it was hard to see in almost all cases, on the basis of the interviews and supporting documentary evidence, why it was deemed necessary.

A lesser sanction highlighted was to **remove the staff member from all or part of their normal job or location**. Again, whilst there might exceptionally be legitimate reasons for such steps, in most of the interviews we conducted, this did not appear to be the case. The third (generally unrecorded, informal and denied) measures were steps which (deliberately or otherwise) undermined and isolated staff by excluding them from normal aspects of their work, marginalising them, restricting development opportunities, or by allowing or promoting gossip about the individual, such that some colleagues distanced themselves socially from the individual.

There were other measures experienced as detriments. The most commonly mentioned was the **length of time** the processes leading up to and during (and after) an investigation took. Some of the examples given were eye-wateringly long. All appeared to have significantly exceeded any time limits within the local procedures, almost all lasted for several months, and a substantial minority exceeded one year, and some even exceeded two years. There appeared, incidentally, to be no obvious correlation between the length of the process and any findings upholding disciplinary allegations or not upholding concerns raised.

There were several reasons for the delays, largely the responsibility of the commissioning employer. They included:

- The gap between the formal step of announcing an investigation and drafting terms of reference and commissioning an investigator.;
- the delay occasioned by any disagreement over the terms of reference (if consulted on) or investigator;
- delays where a “scoping investigation”, described as intended to establish what the terms of reference might be,
- delays in accessing evidence required either by the investigator or the subject of the investigation; delays caused where the investigator is a manager within the organisation with a “day job” that also needs doing; delays occasioned by the number of witnesses.
- delays in getting transcripts or interview notes checked; and delays in drafting the report.
- any delays caused where the commissioner, HR or the employer’s lawyers may seek to amend or challenge the report – in most cases, this was seen as a delaying tactic.
- be delays where the subject of the investigation or the investigator is ill or where delayed representation occurs.

Some of these delays may be unavoidable, but interviewees and survey respondents generally believed that, often the extent of the delays was avoidable and noted they were similar to extended timelines in other cases within their organisation.

Employers are well aware of the impact on employee health caused by such prolonged timescales, and they recognise that this can often lead an employee to resign, experience long-term illness, or be willing to settle and leave even before the process is completed. This was a common experience among our interviewees. We concluded that such delays could not have been caused solely by unavoidable circumstances. Although it was not possible to determine the extent to which delays were deliberate, the pattern, duration, and certain knowledge employers had about the likely effects of these delays led us to believe that, in at least some cases, there was a foreseeable breach of the duty of care towards the subjects of the investigation. It is impossible to state what proportion of the delays were a deliberate strategy to undermine staff, but **it is difficult to avoid concluding that, in some cases — and possibly a significant number — such delays were intentional, given the evidence available.**

HR, management and workplace culture

The role of line managers and HR staff is important at many points in the process described. When disciplinary investigations are authorised, it will generally be a line manager who requests one and HR staff who advise them. A growing number (a majority) of NHS organisations have adopted a triage system intended to interrupt bias when a manager requests a disciplinary investigation. It is not clear how consistently the triage approach works, though it is very likely that it has been a key driver (along with the adoption of a just culture approach)

in the radical reduction in formal disciplinary action within the NHS in recent years, and in the reduction in the relative likelihood of Black and Minority Ethnic staff entering formal disciplinary processes. We were provided with little evidence that any effective triage had been adopted when responding to staff raising concerns.

Power

In such situations, power can be decisive. The employer:

- decides if an investigation is necessary;
- appoints the commissioner and the investigator;
- largely determines the Terms of Reference;
- has access to the personal and contextual data that the investigator or subject of the investigation says they need;
- sets rules around witnesses, notably a common refusal to allow witnesses who have left the organisation, though (perhaps because) they may feel more able to speak freely.
- has ready access to professional legal advice
- receives the draft report with an opportunity to not only fact-check but to amend the outcome
- determines whether all or part (or none) of the main body of the report is shared. h
- has significant influence over the treatment of and support to the subject of the investigation.
- will appoint any subsequent panel and then appoint an HR adviser to it.

An “inequality of arms”

There is, in other words, an “inequality of arms.” An employer has the possibility (unwittingly or otherwise) of allowing or deliberately using that inequality of arms to influence the commissioning, the conduct and the outcome of an investigation

The “inequality of arms” surfaced in various ways. Firstly, **the support that subjects of investigation had access to** varied considerably. A few interviewees had access to what they described as “excellent” trade union support. The majority of these cases were doctors, though not all doctors were equally flattering about their representatives. A small number of other staff expressed satisfaction with the support they got, even when their paid union official was evidently extremely busy. However, a substantial number of survey respondents and interviewees were disappointed or worse with the quality of representation. The officials were generally seen as well-intentioned but as very busy, not easily accessible. They were criticised by a number of survey respondents and interviewees as too keen to “reach a deal” in which the patient safety, behavioural or governance concerns raised, or perceived disciplinary injustice, was not forensically examined with an eye on learning. One other factor was that some trade union officials were seen as having a limited understanding of discrimination.

Other sources of potential support and advice included Freedom to Speak Up Guardians, some of whom were highly regarded, while others were perceived as unhelpful or even positively unhelpful. Staff networks provided moral support but were unlikely to offer advice or advocacy. These support sources contrasted with HR staff, who, although overworked, had better access to lawyers and privileged insight into internal information and peer support.

The 'inequality of arms' worsened when staff, feeling that they had been denied justice internally and facing unfair outcomes, turned to the Employment Tribunal system. They found that access to union support and the quality of advice given were often inconsistent and rarely well explained. Most unions use a “51% chance of success” test to decide whether to support representation at an Employment Tribunal. Consequently, many who did pursue tribunal cases were not represented by their union and had to act as litigants in person, placing

them at a significant disadvantage both in arguing their case and when confronted with rising legal costs and the threat of a costs order against them.

We noted above that, whether intentional or not, the impact of the combination of detriment before any hearing to consider the outcome of an investigation was that a **substantial number (a majority) of our interviewees resigned, left, or retired, citing the effect on their morale, health, wellbeing, and trust in ever being able to return to work safely.**

Trust and compassion

For those considering returning to work, the breach of trust they felt had occurred, the reported lack of compassion, and the reported failure of support alongside their isolation, were compounded by what a number of interviewees believed was collusion by those with power to drive them out. A small number of interviewees were able to provide evidence of emails sent by mistake to them, or "confidential" briefings from investigators that demonstrated pressure or collusion. Others found evidence of collusion, but only once the Employment Tribunal process of "discovery" began, were unable to determine the extent of such collusion. As the literature showed, however, such collusion is certainly not unknown in the NHS.

We noted significant risks arising from conflicts of interest (which might prompt collusion) between internal investigators already familiar with a view of the "character" of the subject of the investigation and managers or HR. Several interviewees expressed concern that some external investigators might be influenced by a "he who pays the piper calls the tune" temptation or have an eye on future commissions.

Harm

The potential harm caused by investigations and employment relations processes may impact (for those subject to investigations) mental health, physical harm, careers, family life and even lead to suicidal ideation. In addition, there may be a substantial cost to the organisation as well as undermining restoration in the workplace, and possibly others involved in the investigation. Both survey respondents and interviewees who had been the subject of investigations recounted harm which corresponded to research findings and, with almost no exception, said they had received minimal support from their employer during the extended period of the investigation.

What learning might NHS employers and staff take from our findings?

Firstly, both the literature and the experiences documented here strongly suggest that **employers should avoid pursuing a formal investigation into workplace conflicts unless there are no other options**. Whenever possible, informal resolution is likely to cause less avoidable harm, emphasise learning rather than blame, save considerable staff time and money, and help preserve fragile workplace cultures. One exception to this rule is that behavioural breaches, particularly acts of discrimination, are unlikely to be suitable for informal resolution unless the individual involved demonstrates a willingness to learn.

Moreover, once a formal investigation begins, it becomes difficult to achieve a constructive resolution, as the focus shifts to blame rather than learning. Almost none of the investigations we considered showed evidence of learning at the end – it was certainly not apparent to the subject of investigation.

A second learning point is that **where investigations may be needed, they require a considerable skill set to undertake them effectively and fairly**. That means a serious rethink about who does them. Investigators we interviewed suggested NHS employers were starting to consider a greater emphasis on growing their own team

of dedicated specialist investigators rather than relying on non-HR managers or external contractors. Some types of investigations, such as those where protected disclosure or discrimination are factors requiring additional skills. To that end, drawing on our findings, we are separately publishing a Code of Practice for Investigators.

A third learning point is that HR and management need to ask at every stage of an investigation, especially prior to a formal investigation being considered and when it is concluded: **what the purpose is, and whom it benefits - the individual, the team, the organisation or patient care?** At its conclusion, they must work much harder to ensure the restoration of the staff member back into their team or workplace in a compassionate manner that rebuilds trust.

A fourth leaning point is that **accountability for those who commission, undertake, advise on, and consider the findings of investigations is essential** There must be an expectation that whether investigations are undertaken, how and how their findings are addressed must be in line with the values the organisation professes and must emphasise compassion, awareness of avoidable harm, the crucial impact of power differentials, the risks of retaliation, the risks of discrimination and an emphasis on asking – "who benefits" and how do we restore psychological safety.

A fifth learning point is that **organisations should not underestimate the risk of making the investigation itself a punishment** and therefore harming those involved, as well as obstructing learning for the commissioning organisation and contributing to a toxic culture. Effective accountability means NHS boards need to be curious and ask, for example, what is the learning from investigations, what are any lasting beyond, say, six months, what consequences are there where patterns arise from data on entrants to, outcomes from, and harm arising from, investigations.

Such accountability might helpfully extend to national regulators. For that to be effective, national leaders, regulators and Ministers need to put into practice the assurances that exist about protecting those who raise concerns, holding to account those who seek to block or punish those who do raise concerns and ensuring that past guidance of disciplinary processes is actioned – they appear to be in some organisations and clearly not in others.

A final learning point is to **reduce the reliance on external investigators** and to be especially cautious about those external investigators **whose short-term commercial interests might not coincide with the values and priorities of the NHS.**

That will require **building skilled investigation teams within and across organisations**, of which there appear to be some limited emerging signs, but **within a national framework of accountability and expertise**. The cultures of an organisation are crucial to how effective and safe patient care is and how well staff are treated. Inappropriate or poorly conducted responses to workplace conflicts will cause damage well beyond the individual case.

A final learning point is to consider reducing **reliance on external investigators and to be cautious about any such investigators whose short-term commercial interests may not align** with the values and priorities of the NHS.

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