



## Lessons in how not to conduct workplace investigations

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Two recent cases of workplace discrimination have caught our eye with respect to how employers should (and should not!) carry out investigations in the workplace. Yorkshire County Cricket Club has infamously made headline news for their poor handling of the discrimination complaints made by player Azeem Rafiq. In a recent Employment Tribunal [case](#), a claimant, Ms S Tesfagiorgis, won her claim for direct race discrimination against her casino employer Aspinalls, who prevented her and another black, female colleague from serving clients who had requested “females with fair skin”.

Here are some key takeaways for employers when conducting investigations into complaints of discrimination:



- **Treat employees with empathy:** It can take a lot of courage to raise complaints especially when the complaints relate to discrimination. Failing to handle the complaint respectfully can not only cause additional emotional distress but may also make it far more difficult to resolve the matter internally.
- **Be timely:** Be sure to investigate in a timely way and dedicate appropriate resource to an investigation, otherwise this may give the impression that the complaint is not being taken seriously or undermine the investigation's credibility. Yorkshire CCC's perceived failure to investigate in a timely way and disclose the investigation report in a timely manner cast further doubt on the credibility of the investigation as a whole.
- **Know the law/take advice:** In both cases there appeared to be a failure to properly understand or apply the law. In the Aspinalls' case the employer took the position that it was okay to act as they did because the client had requested it. Unsurprisingly, this was clearly found to amount to direct race discrimination. In the Yorkshire CCC case harassment (using the term 'Paki') was downplayed as "banter". There was an apparent failure to appreciate that legally the intent of the 'harasser' doesn't matter here and rather what is important is whether the victim received unwanted conduct based on race which created a hostile or degrading environment for them and whether that feeling was reasonable.
- **Be transparent:** If there are delays, let the parties know. One of the things that Yorkshire CCC was criticised for was seeming to delay producing the report setting out its findings which tends to suggest attempts to cover up rather than genuinely investigate.
- **Take appropriate action:** If the investigation does find there has been misconduct, it is important to take the appropriate disciplinary action against those involved. Yorkshire CCC have been particularly criticised for not taking action against individuals until there was widespread public backlash. Likewise, Aspinall's failed to take action to prevent the discriminatory behaviour from happening.
- **Don't just be reactive!** As well as taking appropriate disciplinary action consider what positive steps you can take to deal with workplace issues and promote an inclusive culture. Employers should make sure any relevant workplace policies are up to date and accessible and provide updated training for employees on diversity and inclusion, workplace harassment and discrimination. In addition to helping improve inclusivity, taking reasonable steps to prevent discrimination occurring can help provide a defence should issues be raised against the business in the future.

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This note is for information only and is not legal advice. It reflects the position as of 25 November 2021.