

# 'He Said, She Said' Managing Tricky Workplace Investigations

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# The Question

**“How do you determine the outcome in word-against-word situations involving inappropriate behaviour between employees on official and unofficial work nights out?”**





# Work Nights Out

## Vicarious Liability

- Responsibility for wrongful acts during the course of employees' employment
- Broad interpretation
- Statutory Defence - all reasonable steps to stop the action from occurring.
- Christmas Party / Work Events – Responsible Host



# Unofficial Nights Out

## *Maguire v North Eastern Health Board (2002)*

The employer was not involved in the organisation of a Christmas party and had made no financial contribution towards it.

The Equality Officer was satisfied that the Christmas party was work related since the Complainant would not have been present at the party if they had not been employed by the Company.

## *A Beverage Company v A Worker (2021)*

One employee sexually assaulted another employee following a Christmas party organised by their employer.

Given that the employer had paid for the party and subsidised the hotel rooms in which the employees stayed after the party, this was considered sufficiently connected with the employment to warrant the dismissal of the employee.

## *An Employee v A Café (2024)*

Staff had suggested meeting for drinks one night after work. One employee was kissed by the café manager at the end of the night.

The WRC ruled that the employer was responsible for the sexual harassment of an employee at a social function even though the employer had not formally organised this event. The WRC ordered compensation of €25,000.

# Inappropriate Behaviour

- Nature of the complaint and way in which it came to the employer's attention:
  - Informal comments or gossip
  - Grievance
  - Dignity at Work complaint
  - Whistleblowing complaint
  - Criminal complaint

Will dictate how it is investigated and relevant witnesses



# Concerns for the Employer

1

How to manage/resource the investigation and any disciplinary process

2

How to keep processes moving

3

How to communicate with both employees (Complainant and Respondent)

4

Managing the workplace (suspensions & confidentiality)

5

Managing potential parallel criminal investigations

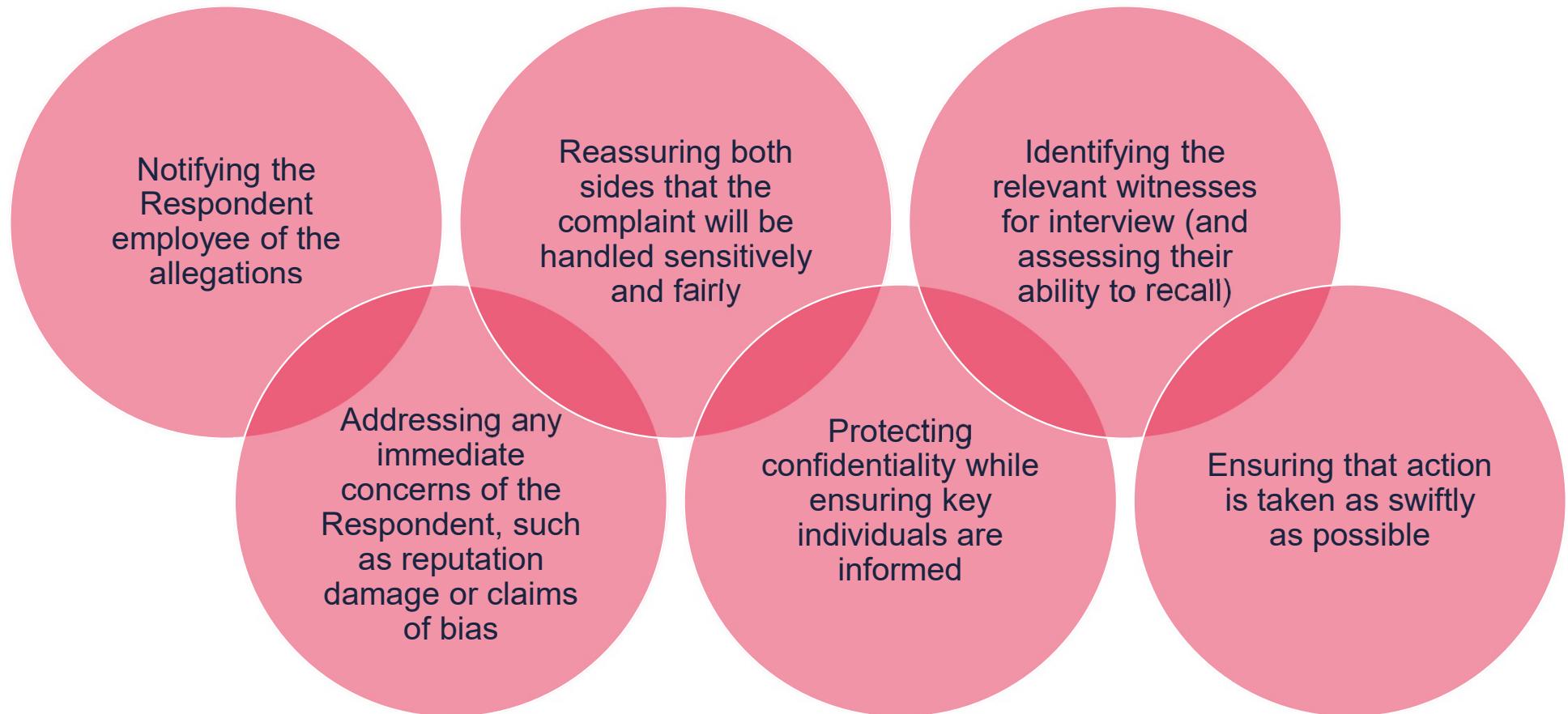
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Managing reputational risk





## Other Considerations



# The Investigation Process





# Appointing an Investigator

Willingness to  
engage with  
the  
investigator –  
perceived bias

Seniority of  
the  
Complainant  
or the  
Respondent  
need to be  
considered?

Sensitivity of  
the issue  
under  
investigation –  
skill required?



# The Investigation

## Terms of Reference

- Scope
- Fact-finding or fact-gathering investigations
- Maintaining confidentiality

## Document Review

- Types of records available
- Verifying consistency or patterns in behaviour

## Interviews

- Supporting the Complainant while gathering detailed facts
- Evaluating credibility
- Reconciling differing accounts from witnesses

## Witness Evidence: the key to determining an outcome

Witness interviews should be conducted in a structured and respectful manner.

Open-ended questions avoiding leading or accusatory language.

Resolve inconsistencies and anticipate lack of corroborating evidence.





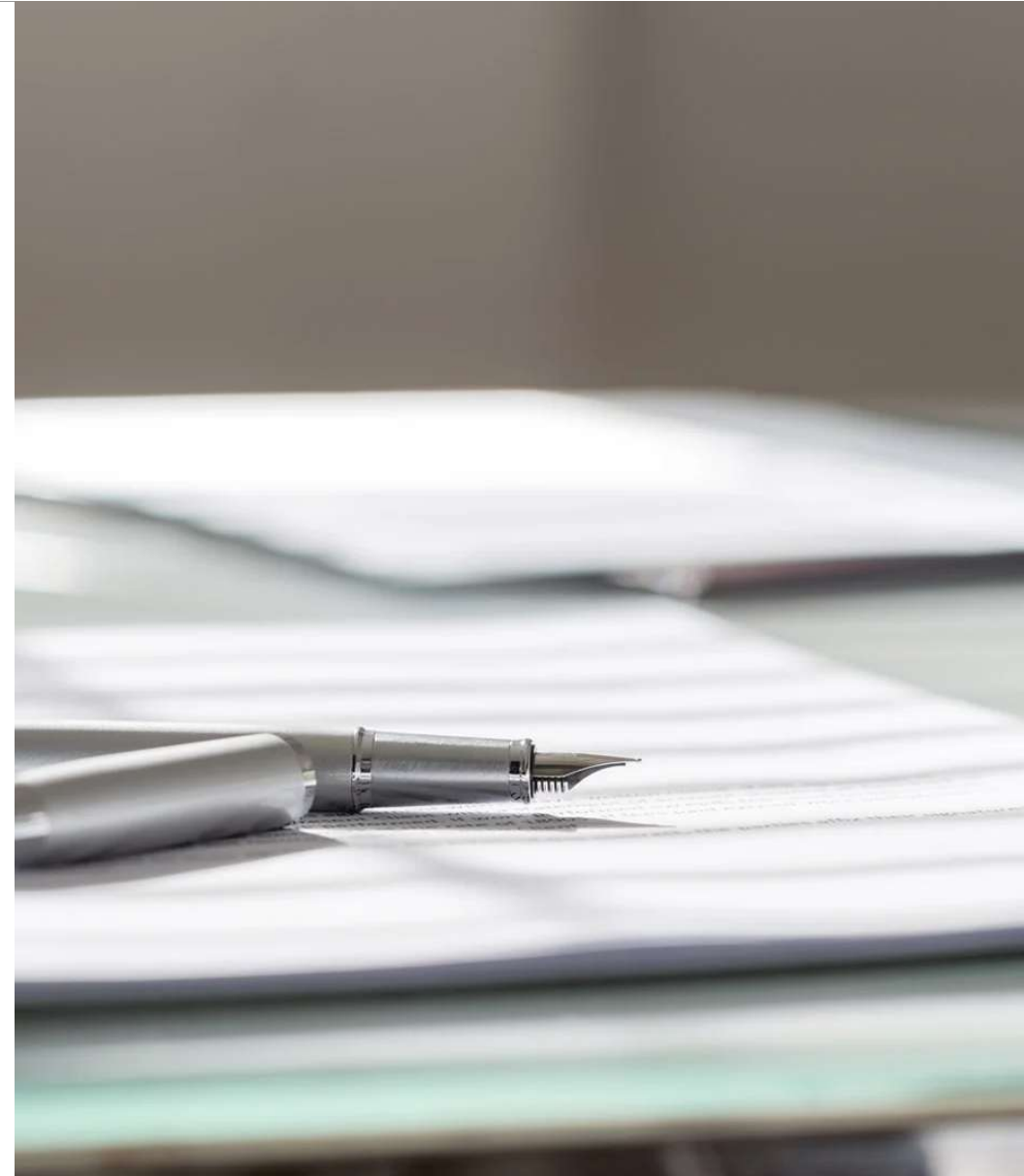
# Right to Silence

What happens when employees refuse to participate?

An employee has the right to silence in an employment context, but only where their right to silence outweighs their employer's right to require the employee to provide information under the employment contract.

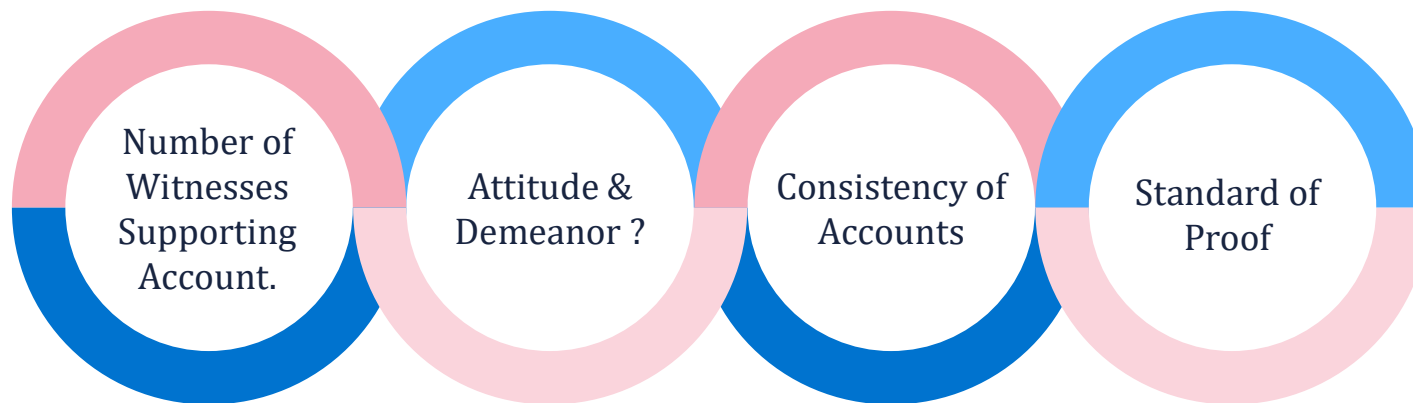
*Electricity Board Supply v Kieran Sharkey* [2024] IEHC 65.

In the context of a concurrent criminal investigation, such a right to silence is time limited **until** the conclusion of the police investigation or until the employer carries out a "balancing exercise" of the competing interests.



# Determining an Outcome

# Corroboration & Credibility





# Thank you

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