

MANAGING INVESTIGATIONS GUIDELINES

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1. INTRODUCTION

- 1.1 The Managing Investigations Guidelines aim to provide a framework which will assist managers to carry out any internal formal investigation process relating to staff fairly and consistently.
- 1.2 The organisation is committed to ensuring that all internal investigations are carried out in accordance with the relevant Policy or Procedure as listed in Section 8 of this document.

2. SCOPE

- 2.2 This document provides guidance for all 'relevant managers' appointed to carry out internal investigations into matters relating to any member of staff within the organisation.
- 2.3 The guidance contained within this document must be used in accordance with the relevant Policy or Procedure, as determined by the nature of the investigation.

3. THE USE OF INTERNAL INVESTIGATIONS

- 3.1 Internal investigations may be required to be carried out in the following circumstances:
 - allegations of misconduct;
 - allegations of bullying / harassment;
 - dealing with employee grievances;
 - dealing with employee capability issues;
 - dealing with poor performance
- 3.2 There may be a requirement regarding Fraud however this would be carried out in liaison with the Local Counter Fraud Officer.
- 3.3 Internal investigations must always be carried out in accordance with the relevant policy (e.g. Disciplinary, Grievance Procedure) as determined by the nature of the issue in question.

THE IMPORTANCE OF INVESTIGATIONS

- 3.4 In accordance with many HR policies and procedures, managers are required to gather information in relation to a particular allegation or issue. In the case of disciplinary investigations, managers will receive an investigation report from which they will be required to make a recommendation about the most appropriate course of action(s), which in some cases can include proceeding to a formal hearing where

the issues will be considered and appropriate sanctions or remedial action may be applied.

- 3.5 In such cases employers are frequently required by Employment Tribunals to demonstrate how and why they reached a particular decision or recommended a course of action, and whether or not they acted reasonably in accordance with the relevant internal policy or procedure.
- 3.6 A thorough and independent investigation carried out fairly and consistently will provide managers with the necessary facts and evidence on which appropriate decisions can be made and demonstrated as fair and reasonable in line with the relevant policy or procedure.

4. INVESTIGATION PROCESS – PRELIMINARY INFORMATION

WHO SHOULD INVESTIGATE?

- 4.1 Dependent upon the policy or procedure being used, a relevant manager will be appointed as appropriate; a senior manager within the service will be involved in appointing the investigating officer. The relevant manager must have received appropriate training (this may be provided in the form of 'on the job' training through shadowing an experienced Investigator, or by a member of the HR team providing close monitoring and support through an investigation, or by attendance at a formal Investigation Training session) and would normally be supported by a representative from Human Resources. Those undertaking the investigation are referred to as the Investigating Officer.
- 4.2 The relevant manager should normally be of a level of seniority at least equal to the person or persons who are the subject of the investigation. In order to demonstrate impartiality the relevant manager should have had no prior involvement in the events or allegations under investigation, and should declare any potential conflict of interest that may disqualify him or her from conducting the investigation at the outset.

GETTING STARTED

- 4.3 Before commencing the investigation it is necessary to identify:
 - Terms of Reference – scope of investigation, role of investigator,
 - details of the precise issue to be investigated, e.g. details of allegations made etc.;
 - suggested methodology for conducting investigations, e.g. identification of initial witnesses, copies of policy being breached etc.;
 - under which policy or procedure the investigation is being conducted;

- for what purpose and by whom any Investigation Report will be used.

5. INVESTIGATION PROCESS – INTERVIEWS AND INFORMATION GATHERING

INVESTIGATION INTERVIEWS

- 5.1 The Investigating Officer must plan to interview any person identified who may be able to provide information relevant to the investigation. This could include:
- other members of staff who witnessed / took part in the alleged incident;
 - other members of staff within a department;
 - relevant line managers;
 - any other person who is identified to have information relevant to the investigation.
- 5.2 Where possible the witnesses should be interviewed in a logical manner, in which ideally the person raising the issue / allegation should be interviewed first and the person whom the allegation is against should be last. Witnesses should be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses may be identified during the investigation and must also be interviewed.
- 5.3 All witnesses must be advised of a suitable meeting date, be given reasonable notice and be given the opportunity to be accompanied by a work colleague or Trade Union representative. The witness should be advised that the purpose of the meeting will be to discuss in detail their account of a particular incident / allegation which forms part of the relevant policy or procedure. They will be made aware of the need for confidentiality and discretion throughout their involvement in the process.
- 5.4 In preparation for the investigation interviews the investigating officer should:
- ensure that a suitable private room is available to hold the interview meeting confidentially and without interruptions;
 - ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures etc.;
 - prepare a list or structure of questions in relation to the alleged incident / allegation;
 - ensure that detailed notes of the meeting are taken, for use within the investigation process / report where appropriate.

STRUCTURE OF INVESTIGATION INTERVIEWS

5.5 The structure of Investigation Interviews should broadly follow the format below:

INTRODUCTION

5.6 Explain the context of the interview, for what purpose the meeting notes and subsequent statement will be used, how and when the interviewee will be able to check the notes / statements and the importance of confidentiality.

QUESTIONING

5.7 The following questioning techniques may be used:

- Use a technique of using open questions (who, what, why, when, how etc.) with closed questions being used to clarify points. Leading questions should always be avoided.
- Discuss and enquire into any additional information / evidence presented whilst always returning to the prepared list / structure of questions.
- Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. 'bullying' or inappropriate behaviour' etc.
- Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answers any appropriate questions or concerns raised.

CLOSING STATEMENT

5.8 The meeting should be concluded. The Investigating Officer may wish to:

- Explain the next steps, confirming how / when the witness statement is to be prepared and verified and when the investigation is expected to be completed.
- Ensure that contact details of Investigating Officer are provided, and ensure confidentiality understood.

REVIEW OF INFORMATION

5.9 At the end of the investigation interview the Investigating Officer should have obtained from each witness:

- the names of those present or involved;
- date / time / place of the alleged incident / allegation;
- details of what took place, and the order in which they happened;

- how the individual reacts to any other documents or witness evidence which is inconsistent with their account;
- the steps taken since the alleged incident / allegation, including any steps taken to resolve;
- their preferred outcome (where appropriate i.e. in relation to raising a Grievance).

NOTES / WITNESS STATEMENTS

- 5.10 As a matter of course witness statements will usually be ascertained initially. Any notes taken during the investigation interviews should be typed and ideally checked and signed by the witness. This is essential if a written witness statement is not required / prepared.
- 5.11 Where possible an Investigating Officer should prepare a draft witness statement for the witness using the notes from the investigation interview. The statement should record the facts, written (within reason) in the language used by the witness following the train of events. If there is any ambiguity or gap in the account these should be clarified with the witness. The witness must be given the opportunity to review the statement and must only sign to confirm it as a true and accurate version of events.
- 5.12 Where witness statements cannot be prepared by the investigating officer the witness can be asked to provide a written statement which can be prepared with their Trade Union representative. In these cases the statement should be checked by the Investigating Officer and included in the Investigation Report alongside the notes from the investigation meeting for points of clarity.

OTHER / SUPPLEMENTARY EVIDENCE

- 5.13 As well as taking witness statements, it is important to cross reference verbal accounts with other records and evidence as appropriate. The Investigating Officer may require sight of any of the following in order to satisfy themselves that they have been able to obtain a balanced and clear view of the facts.
- 5.14 Other evidence to be considered during the course of an investigation may include:
- Information from the Personal file (managers file or HR file) – this may include notes of meetings/discussions held, previous warnings, sickness certificates, annual leave records, correspondence etc.
 - Policy /Procedural documents
 - Email communications

- Anonymised patient records (in clinical performance/negligence cases) as appropriate – please seek HR advice on this before proceeding

6. PRESENTING THE FINDINGS

PREPARING AN INVESTIGATION REPORT

EVALUATING THE EVIDENCE

- 6.1 All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report. This may include witness statements, notes from investigation interviews, relevant policies & procedures, evidence of custom and practice etc. This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider.
- 6.2 In evaluating evidence, each case should be judged on its merits; however, the following points should be considered:
- direct witness evidence will usually be stronger than indirect information relating to the incident / allegation;
 - evidence which is inconsistent with documents produced at the time is questionable;
 - evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable;
 - anonymous evidence should be reviewed with caution as it is often difficult to substantiate;
 - consideration should be given to any bias, motivation or influence individual witnesses may have;
 - where possible the factual accuracy of points raised in witness statements should be verified by the Investigating Officer if they are material to the allegations.
- 6.3 It is important to remember that in reviewing the evidence and recommending appropriate courses of action, the Investigating Officer only has to show they have a reasonable belief of what happened based on their assessment of the evidence.
- 6.4 Unlike a legal case there is no requirement to prove a case 'beyond reasonable doubt'. Internal Investigations aim to provide a conclusion based on 'the balance of probabilities'.

INVESTIGATION REPORT STRUCTURE

- 6.5 An Investigation Report should be written by the Investigating Officer, and should normally be structured as follows:

INTRODUCTION

- 6.6 A brief introduction to the report listing the allegations / incidents which have been investigated, details of the person against whom the allegation has been made, including whether they are currently suspended from duty and the names of the Investigation Panel.

METHODOLOGY

- 6.7 This section should detail the process of the investigation including a list of the people interviewed specifying whether witness statements / notes from meetings have been taken, details of Policies and Procedures reviewed, and details of any other activities undertaken as part of the investigation (watching video's etc.).

FINDINGS / ANALYSIS / STATEMENTS FROM WITNESSES

- 6.8 This will be the largest section of the report and will detail the findings from the investigation, including the facts and evidence presented, any inconsistencies found with explanations where applicable, any mitigating circumstances and any risks identified.
- 6.9 Where information from particular witnesses is cited, notes must be made of the relevant appendices where the notes / witness statements can be found.

CONCLUSION

- 6.10 Where appropriate, a final section could include the conclusions drawn by the Investigating Officer following the evaluation of the evidence.

APPENDICES

- 6.11 All witness statements / notes from meetings, copies of correspondence, or policies cited during the report should be included.

7. INVESTIGATION PROCESS – POSSIBLE ISSUES & PROBLEM AREAS

DEALING WITH DIFFICULT ISSUES

- 7.1 Inevitably during the investigation process unexpected events occur, which fall outside of the terms of the investigation. These may be dealt with as follows:

FURTHER OR COUNTER ALLEGATIONS

- 7.2 If the allegations relate directly to the current investigation or substantiate other information the Investigating Officer must refer these back to manager who commissioned the investigation for a decision around whether to include these in the current investigation. If this is the case the person under investigation must be written to, informing them of the inclusion of additional allegations. If the allegations do not relate, or are made against other parties, these should be dealt with separately from the investigation.

CONFIDENTIALITY

- 7.3 The Investigating Officer must ensure that all witnesses and those interviewed understand how the information they provide will be used. If a witness asks if what they disclose can remain confidential, the investigating officer should explain that if it is important and relevant to the investigation, it will be included in the report; however, confidentiality will be maintained where possible. It is important also that witnesses understand that there may be a need for them to attend a formal hearing to affirm their evidence and answer questions relating to their evidence.

REFUSAL TO PARTICIPATE (ALLEGED PERPETRATOR)

- 7.4 If the employee against whom an allegation has been made refuses to participate they should be informed that, unless they provide information, either in person during an investigation meeting, or in writing in relation to the allegations, a decision may be made based on the information provided to the investigating officer by other sources. Furthermore there is the issue that they are failing to adhere to reasonable management instruction which in itself may necessitate further action. It is essential that this be communicated verbally and in writing, giving the employee time to reflect and respond appropriately. It is important to offer support to all parties involved, and keep them informed, throughout the process.

REFUSAL TO PARTICIPATE (WITNESS)

- 7.5 If a witness refuses to participate it is important that the investigating officer meets with the witness to find out the reasons behind why they do not wish to participate, to discuss the process which will be followed and provide reassurances of the support which will be available to them. Dependant on the case in question, it may be possible to continue the investigation even if the witness refuses to make a formal statement. Equally there is the issue that they are failing to adhere to reasonable management instruction which in itself may necessitate further action.

8. TIMESCALES

- 8.1 Investigators should endeavour to complete investigations within one month. Should any extension to this timescale be required, detailed reasons should be provided to the HR Business Manager, so that this can be communicated to relevant parties.

9. REPORT TEMPLATE

- 9.1 An example report template will be provided to the Investigating Officer by the HR department.