

Conducting an Investigation

Process Guide

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CONTENTS

Purpose and Scope	2
Role of Nominated Officer	2
Role of Investigating Officer	3
Role of Representative at Investigatory Interviews	3
Timescales and Confidentiality	4
Establishing and Recording Facts	4
Investigating Officer's Report	5
Determining the Outcome of the Investigation	5
Post Investigation	5
Appendix 1: Investigation Brief	7
Appendix 2: Investigating Officer's Checklist	8
Appendix 3: Menu of Standard Letters	9
Appendix 4: Record of Investigatory Interview	10
Appendix 5: Investigating Officer's Report - Sample Template	11

CONDUCTING AN INVESTIGATION

PROCESS GUIDE

1. PURPOSE AND SCOPE

1.1 Conducting a thorough and impartial workplace investigation is the cornerstone of a fair disciplinary process. The reasonableness of any subsequent disciplinary decision or resolution to a complaint of bullying or harassment will ultimately depend on the integrity and transparency of the investigatory process followed. By law, employers are expected to act reasonably and fairly when addressing issues of employee conduct in the workplace and therefore by definition, a flawed investigation is likely to result in unsound outcomes that undermine an employer's case if coming under scrutiny at an internal appeal or Employment Tribunal.

1.2 This Guide is intended to assist individuals appointed to the roles of Nominated and Investigating Officers from avoiding the pitfalls of inadequate or unsound disciplinary processes particularly with regard to the investigatory stages. The Guide supplements council policy and procedure and should be read in conjunction with the following documents:

- the council's [Discipline Procedures](#)
- the council's [Disciplinary Procedure Managers Guide](#)
- [ACAS Code of Practice on Disciplinary and Grievance Procedures](#)
- the council's [Policy and Procedure on Dealing with Complaints of Bullying and Harassment at Work](#)
- the councils Code of Practice on [Promoting Appropriate Working Relationships and Behaviour](#)
- [ACAS guidance on Bullying and Harassment at Work](#)

2. ROLE OF NOMINATED OFFICER

2.1 The first stage of the disciplinary process/investigation of a complaint of bullying and harassment begins with the appointment of an officer (the 'Nominated Officer') who is responsible for ensuring that the circumstances surrounding an allegation or complaint are fully investigated and appropriate remedial action taken as required.

2.2 The Nominated Officer will be appointed with the nature of the allegation/complaint in mind and as such, should possess the necessary level of powers under the service's Scheme of Delegation to take appropriate action should the allegation/complaint be substantiated, which in serious cases may include dismissal.

2.3 The Nominated Officer will;

- Appoint an individual (the 'Investigating Officer') to conduct an impartial and thorough investigation within agreed timescales. The Investigating Officer will

normally be appointed from out with the immediate service area and in appropriate circumstances, from out with the service altogether with a view to maintaining transparency and process fairness.

- Define the scope and purpose of the investigation to be undertaken by the Investigating Officer (Appendix 1).
- Notify the relevant parties in writing of the commencement of the investigation and thereafter at the key stages of the process using the appropriate letter from the menu of template letters (Appendix 3).
- Determine the action, if any to be taken following completion of the investigation which may include convening a disciplinary hearing under the council's Disciplinary Procedure(s) if appropriate.

3. ROLE OF INVESTIGATING OFFICER

3.1 The Investigating Officer will;

- Discharge the Investigation Brief (Appendix 1) using the Investigating Officer's Checklist (Appendix 2).
- Invite the parties involved to attend an Investigatory Interview using the appropriate letter from the menu of template letters (Appendix 3).
- Interview the parties involved and obtain signed statements using the template document set out in (Appendix 4).
- Produce a factual report for consideration by the Nominated Officer using the template (Appendix 5).
- Present the report and supporting information/evidence at any subsequent disciplinary hearing as required.

4. ROLE OF REPRESENTATIVE AT INVESTIGATORY INTERVIEWS

- 4.1 Where an employee, who is the subject of a disciplinary hearing or bullying & harassment complaint, appoints a trade union representative, the trade union representative may accompany the employee to any Investigatory Interviews. The employee may alternatively be accompanied by a work colleague or some other person of their choice.
- 4.2 The representative's role at the Investigatory Interview will be limited to the opportunity to make a statement at the end of the Investigatory Interview and not to respond to any questions addressed to the employee.
- 4.3 In addition, employees have the right to be represented at Disciplinary Hearings by a Trade Union representative or some other person of their choice.

5. TIMESCALES AND CONFIDENTIALITY

- 5.1 Whilst there is no set timescale for undertaking an investigation as the duration will depend on the nature and complexity of the matters under consideration, Investigating Officers should nevertheless aim to complete the process as quickly as possible following an incident/receipt of a complaint when facts and recollections are fresh in witnesses' minds.
- 5.2 The timescale should be of a sufficient length to enable a thorough investigation of the facts without the process being unduly drawn out. The timescale also needs to be flexible to accommodate witnesses who may be unavailable due to holidays or illness, and potential delays in receiving relevant medical/police reports etc. As a general rule of thumb, an Investigating Officer should aim to conclude the investigatory process **within a period of 6 weeks from the date of receipt of the Investigation Brief from the Nominated Officer**, although in practice this may be longer or shorter depending on the complexity of the matter being investigated.
- 5.3 At all times those involved in the process should ensure that the matter remains confidential and is only discussed with relevant individuals as necessary.

6. ESTABLISHING AND RECORDING FACTS

- 6.1 The strength of an investigation is based upon corroborated evidence gathered from witness statements and other workplace records. If there is any doubt about dates/times of incidents and events, the Investigating Officer should try to seek corroborating evidence from service records, client files etc. Where this is not available, the Investigating Officer should highlight this in the conclusions of the Investigation report.
- 6.2 In these circumstances the Nominated Officer will require to draw appropriate conclusions from the opinions or perceptions expressed in the course of documented interviews with witnesses or seek further clarity at any subsequent disciplinary hearing.
- 6.3 The basic issues to be established from an investigation can be generally summarised as:
- WHAT:** What allegation(s) or incident (s) is/are being investigated,/what council policy has been potentially breached?
- WHEN:** When did the alleged incident(s) take place?
- WHERE:** Where did the alleged incident(s) happen?
- WHO:** Who was involved?
- WHY:** Why has the incident/behaviour created a problem?
- 6.4 The set of questions asked at the investigation interview will be key to establishing the facts. Prior to the interview, the Investigating Officer should prepare a list of proposed questions (open and closed). Consideration should also be given to those areas where it can be anticipated that supplementary questions may be required.

- 6.5 During the interview, the Investigating Officer should take time to consider the responses and where responses seem unclear or contradictory, clarification should be sought.

7. INVESTIGATING OFFICER'S REPORT

- 7.1 The findings of the investigatory process are pulled together in the Investigating Officer's Report together with copies of signed witness statements and other relevant documents gathered as part of the process. For reasons of confidentiality however, the original Formal Complaint Form should not be issued as part of the Investigating Officer's Report but extracts may be used as necessary. A template for an Investigating Officer's Report is provided at (Appendix 5).

- 7.2 The Investigating Officer's report should be restricted to a factual and impartial summary of the findings of the investigation and as such in preparing the report the Investigating Officer must avoid encroaching on the role of the Nominated Officer by making recommendations with regard to disciplinary or other actions. It is the role of the Nominated Officer to draw conclusions from the facts presented in the Investigating Officer's report and in this regard the Investigating Officer must refrain from stating personal opinions and judgements.

8. DETERMINING OUTCOME OF THE INVESTIGATION

- 8.1 Having received the completed Investigating Officer's report, the Nominated Officer must consider the report and supporting evidence in detail. The Nominated Officer must satisfy him/herself that the report meets the objectives of the written brief and that it contains sufficient factual detail from which conclusions can be drawn. In particular the Nominated Officer must be satisfied that there are no aspects that require further clarification or follow up with witnesses where statements have been made that are incomplete/ inconclusive or do not support or corroborate other elements of the investigation.

- 8.2 In the event that the Nominated Officer concludes that there is insufficient detail to make a decision on the matter, the Investigating Officer will be asked to seek further information/clarification.

9. POST INVESTIGATION

No Grounds for Disciplinary Hearing

- 9.1 If having considered the findings from the investigation, the Nominated Officer concludes that there are no grounds to convene a disciplinary hearing, any written statements obtained and any other documents relating to the investigation including the Investigating Officer's report will be destroyed in accordance with the terms of the council's Disciplinary Procedure (subject to the exception in relation to matters concerning the safety and well-being of young and/or vulnerable people in receipt of client services).

- 9.2 In the case of a complaint of bullying and harassment, and where the Nominated Officer concludes that there are insufficient grounds to convene a disciplinary hearing:

- the Nominated Officer will arrange to meet separately with the parties concerned (and their representatives if any) to advise of the outcome of the investigation together with the reasons for the conclusions reached;
- a full review of the findings of the investigation will only be merited if, based on representations from the parties involved, it is clear that a procedural omission or flaw has occurred that impacted materially on the original conclusion;
- if the Nominated Officer in these circumstances is not persuaded of the case to review the original findings, there is no formal right of appeal. However it is acknowledged that the trade union or other representative is free to pursue the matter on an employee's behalf through the council's [Procedure for Hearing Employee Grievances](#) or [Procedure for Hearing Employee Grievances \(Teachers\)](#) for reasons of confidentiality and the need to avoid or minimise any potential impact on members of the wider team who may have been party to the investigation, the Investigating Officer's report **will not** be released;
- the complainant will be informed of any action short of formal disciplinary action that is to be taken in the circumstances. The outcome will be confirmed in writing to each party;
- where it is agreed by the parties concerned that it would be helpful in trying to establish ground rules for a sustainable working relationship going forward, the Nominated Officer will arrange for input from an individual trained in mediation techniques;
- the representatives of the parties involved will be consulted and kept advised of any agreed action to resolve/ improve working relationships arising from the mediation process.

Disciplinary Hearing Convened

- 9.3 If having considered the findings from the investigation, the Nominated Officer concludes that there are grounds to convene a disciplinary hearing, the Investigating Officer will require to attend the hearing and present his/her findings.
- 9.4 The Investigating Officer should be prepared to be asked questions on the evidence gathered and the process followed in compiling his/her report by all parties in attendance at the hearing.
- 9.5 The Nominated Officer will decide on the action, if any to be taken at the conclusion of the hearing, supported as necessary by advice from Human Resources.

Follow Up Action – Complaints of Bullying and Harassment

- 9.6 In the case of a complaint of bullying and harassment, the complainant will be notified of any appropriate action being taken to prevent a re-occurrence of the unacceptable behaviour.

- 9.7 It may be appropriate in some cases of bullying and harassment to meet with the complainant to discuss any residual issues/concerns following the conclusion of the case.

HR Policy & Advice
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(Amended February 2016)

INVESTIGATION BRIEF

(To be completed by Nominated Officer)

Nominated Officer:			
Investigating Officer:			
Allegation Against:			
Date Complaint Received:		Target Date for Completion of Investigation:	

Summary of Complaint/Allegation

For example this may include key details drawn from the Bullying and Harassment Formal Complaint Form:

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Action Taken Pending Investigation:

Action	Tick if Appropriate	Date Action Taken
Suspension	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Risk Assessment (where PVG is relevant)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Removal from regulated work	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Temporary Transfer	Yes <input type="checkbox"/> No <input type="checkbox"/>	

Initial Contact with Human Resources:

Name of HR Adviser	Date Contact Made

Notification of Trade Union Representative (if appropriate):

Name of TU Representative

INVESTIGATION CHECKLIST

(To be completed by Investigating Officer)

SUBJECTS OF INVESTIGATION

Employee(s) Under Investigation	Date Interviewed	Date of 2 nd Interview (if required)

EMPLOYEE INTERVIEWING PROTOCOLS

	Tick Box On Completion
Employee Advised of Investigation Brief	
Advised that they may be accompanied	
Advised of Possibility of Disciplinary Hearing	
Advised of Requirement for Confidentiality	

WITNESSES TO INCIDENT/COMPLAINT

Names of Witnesses(s)	Date Interviewed	Date of 2 nd Interview (if required)

WITNESS INTERVIEWING PROTOCOLS

	Tick Box On Completion
Witness Advised of Right to be Accompanied (if appropriate)	
Advised of Possibility of Attendance at Disciplinary Hearing	
Advised of Requirement for Confidentiality	

COMPLETION DETAILS CHECK

Date Investigation Report Completed & Passed to Nominated Officer	
Relevant Policies/Codes of Practice/ Service Records/ Medical Reports Obtained	
Witness Statement(s) included with Investigation Report	

MENU OF STANDARD TEMPLATE LETTERS

INVESTIGATORY STAGE

- Letter 1: Complainant Notified of Investigation – Nominated Officer
- Letter 2: Employee Notified of Commencement of Investigation – Nominated Officer
- Letter 3: Employee Instructed to Attend Investigatory Interview – Investigating Officer
- Letter 4: Complainant/Witness Invited to Investigatory Interview – Investigating Officer
- Letter 5: Employee Notified of Outcome of Investigation (No Action) – Nominated Officer
- Letter 6: Complainant Notified of Outcome of Investigation (No Action) – Nominated Officer

DISCIPLINARY STAGE

- Letter 7: Employee Instructed to attend Disciplinary Hearing – Nominated Officer
- Letter 8: Complainant/Witness Invited to Attend Disciplinary Hearing – Nominated Officer
- Letter 9: Employee Notified of Outcome of Disciplinary Hearing (No Action) – Nominated Officer
- Letter 10: Employee Notified of Outcome of Disciplinary Hearing (Written/Final Warning) - Nominated Officer
- Letter 11: Employee Notified of Outcome of Disciplinary Hearing (Dismissal)
- Letter 12: Complainant Notified of Outcome of Complaint (Substantiated) – Nominated Officer
- Letter 13: Complainant Notified of Outcome of Complaint (No Disciplinary Action) – Nominated Officer

Note: Please contact Human Resources for required template letters and for further advice on their use.

RECORD OF INVESTIGATORY INTERVIEW

Investigating Officer:	
Assisted By :	
Interviewee:	
Accompanied by (if appropriate):	
Date of Interview:	
Transcript of Interview:	
Q1.	
A1.	
Q2.	
A2.	
Q3.	
A3.	
Statement made by representative (if appropriate):	
Declaration:	
I agree that the foregoing transcript is a true and accurate record of the interview held on (Date)	
Witness Signature	
Date	

INVESTIGATING OFFICER'S REPORT – SAMPLE TEMPLATE

Front Page	<ul style="list-style-type: none"> • Disciplinary Investigation – Complaint/Allegation • Data labelled – Private & Confidential
Page 2	<ul style="list-style-type: none"> • Contents Page
Section 1	<ul style="list-style-type: none"> • Summary of Investigation Brief
Section 2	<ul style="list-style-type: none"> • Methodology (<i>How the evidence was gathered and who was involved in the investigatory process</i>)
Section 3	<ul style="list-style-type: none"> • Key findings from the Investigation (<i>e.g. un/corroborated evidence, opinions presented, perceptions, facts, observations</i>)
Section 4	<ul style="list-style-type: none"> • Conclusions (Not recommendations)
Section 5	<ul style="list-style-type: none"> • Appendices (Witness Statements and any other evidence gathered or referred to in the report must be attached)