

GUIDELINES ON CONDUCTING INVESTIGATIONS

Index

1. Introduction	3
2. Timescales.....	3
3. Who investigates.....	4
4. The role of an investigating officer.....	4
5. Special Paid Leave.....	5
6. The role of accompanying persons.....	6
7 Preparation for the investigation.....	6
8. Documentary evidence.....	8
9. At the start of the investigatory meeting.....	8
10. Interviewing the employee under investigation.....	9
11. Interviewing witnesses	9
12. Telephone interviews.....	11
13. General Questioning Techniques.....	11
14. During the course of the meeting.....	13
15. Surveillance.....	13
16. Confidentiality.....	13
17. Data Protection Act.....	14
18. Documents and e mails.....	14
19. Statements	14
20. Disputed record of investigation meeting.....	15
21. Evaluation.....	15
22. Reporting.....	15
23. Outcome of the investigation	16
24 Presenting the investigation at a hearing.....	17
25 Access to Investigation report.....	17

26. Anonymous reports/unsigned statements.....	18
27. Third party evidence.....	18
28. Police enquiries.....	18
29. Discrimination/harassment.....	18
30. Whistleblowing/Code of Conduct for employees.....	19
31. Contacts.....	19
- Sample letters/reports.....	20

1. Introduction

These guidelines should be used when investigating either internal disciplinary investigations or complaints of grievance and should therefore be read in conjunction with the relevant disciplinary or grievance procedure.

The guidelines provide a brief framework within which to work and are neither intended to be entirely definitive nor provide specific legal or professional advice.

Some incidents may need to be investigated by those who have legal/regulatory/policy responsibilities and particular obligations to meet, for example Internal Audit or Social Work. In these cases the appropriate investigative processes/requirements may have to take precedence.

The purpose of investigations is to establish facts in order to answer the question whether or not the employee has a case to answer. The investigators' role is to gather evidence concerning the specific allegations. The evidence collected may or may not support the allegations, and it is not the role of the investigators to "build a case" against an employee.

What must be made clear to those under investigation is that the investigation, whilst forming part of either the disciplinary or grievance process, does not amount to disciplinary action in itself. Any formal disciplinary action must only be determined within a formal disciplinary hearing and a hearing should not be held until there has been an investigation.

In cases of misconduct the law is quite clear that the employer may be deemed to have acted unreasonably if the allegation/complaint is not investigated fully and fairly and the employee has not had the opportunity to state his/her defence and offer explanation or mitigation. In conducting investigations the employer must act reasonably and avoid doing anything which may lead to accusations of bias or discrimination.

2. Timescales

Investigations should be carried out as soon as possible, before recollections fade and be conducted as speedily as possible consistent with the principles of fairness and natural justice.

In less complex circumstances it is expected that an investigation should be concluded within one week to ensure that the service suffers minimum disruption. Speed of investigation however should not compromise the integrity of the investigation.

More complex cases may take longer but should not exceed 6 weeks other than in exceptional circumstances.

If the investigation is taking longer than 6 weeks the appropriate Service Director and HR Business Partner must be formally notified. The employee under investigation must also be kept informed of the anticipated timescales together with any reasons for delay

There may be occasions when an investigation is delayed due to the intervention of an external agency, such as the Police or the Child Protection Agency. Advice should be sought in such circumstances from HR and/or Legal Services.

Case law exists to demonstrate the fact that undue delays in conducting an investigation can lead an Employment Tribunal to a conclusion of unfair dismissal, as can failure to provide all witness statements to the employee under investigation and failure to interview witnesses who may have relevant evidence, even if these defects may not have affected the outcome.

3. Who Investigates

Each investigation will require at least one Investigating Officer, normally two because when conducting interviews the use of a second investigator or at least a notetaker is essential to ensure sufficient and accurate notes can be made and to protect against any misunderstanding. Where the complaint concerns an allegation of harassment or discrimination it is essential two investigators are present.

The investigators will ordinarily be appointed from within the relevant Department. It is recommended that at least one investigator must be independent of the section/office where the alleged incidents occurred. The investigators need to be of sufficient seniority and wherever possible at least one of whom should have had prior experience of investigations. HR will advise on the appointments of investigators and give clear advice where it appears that there may be conflicts of interest, particularly where the investigator is the manager of the department in question.

To avoid any potential conflict of interest it is important that roles within disciplinary and grievance matters are kept discrete. This means that an investigator should not be appointed if he/she has previously been involved in giving advice on the matter in question to the employee under investigation. Neither should an investigator be appointed if he/she is a witness to any relevant incident or event and an investigator must not later become involved in making disciplinary decisions. Care should also be taken to avoid any personal conflicts such as the involvement of a family member or friend. Obviously if a manager is the subject of a complaint then it is not appropriate for he/she should not be involved as either investigator or decision maker. Additionally if a complaint has been made against a manager it is advisable that a more senior officer carries out any investigation.

HR and/or Legal Services advice must be sought in cases involving child protection and vulnerable adults' issues. Where investigations take place involving alleged financial irregularities, Internal Audit must be informed and they will advise if they wish to assist in the investigation.

Before embarking on an investigation the investigators should be given a written remit by the commissioning manager. (A commissioning manager is usually the manager who will ultimately decide whether or not a disciplinary hearing would be appropriate and who would normally chair that hearing should there be one) The remit must detail what the investigators are being asked to investigate. The Investigators should ensure that they receive full details of what they are being asked to investigate including any documentation that already exists and in particular any written complaint(s). This will enable a focus on what is trying to be established. If the allegations are unclear at the start the investigation has the potential to be unfocused.

HR are available to give advice to investigators but are unable to routinely assist in conducting investigations. They will offer advice on all cases and may support only in serious or complex cases, for example those involving alleged harassment or discrimination.

4. The role of an Investigating Officer

Anyone appointed as an investigator must read these guidelines before embarking on an investigation to ensure he/she understands the role.

In carrying out investigations, investigators are advised to prepare thoroughly by assembling any relevant documentation, deciding which witnesses may be required, notifying individuals in advance (where possible)

As stated in the introduction, the role of the investigator in assembling evidence is to pursue relevant facts whether or not those facts support or oppose the allegations under investigation. It is not the role of investigators to “build a case” against an employee and it is important therefore that investigators maintain a neutral position. If neutrality is not maintained it could bias an investigation. Investigators during the course of an investigation may hear two or more opposing accounts of events, each of which is equally convincing. If the first view heard is assumed to be the truth and questions follow on from this then unconscious bias may occur. It is important that the investigators ask each person for their version of events, and probe and challenge where accounts differ. The investigators can then cross-reference evidence as much as possible in order to try and establish fact.

Investigators should remember that someone holding a belief is a fact i.e. it is a “fact” that someone believes something to be true, in which case it will be the investigators’ role to establish the evidence for this, normally in the first instance with the person who has the belief.

Investigators need to be thorough and cover not only the specific allegation but also include relevant context in their investigation. If not, this could mean that any subsequent hearing has to be postponed to allow further information to be gathered, for instance, if an employee raises matters during the hearing which have not previously been investigated (such as evidence from a witness, custom and practice etc). For example a complaint may exist that an employee has done /not done something which is believed to constitute misconduct/gross misconduct. The employee under investigation might admit it immediately and it may be tempting to conclude the investigation at this point. However in reality there may be other information that may be critical to a hearing which should be ascertained. The investigation should therefore probe further. If say a person is accused of and admits to not following a particular procedure which has had unacceptable consequences. Whilst on the surface this seems fairly straightforward, further probing of employee and witnesses may reveal a lack of training, a lack of understanding, a more general culture of not following procedures, management turning a blind eye etc. The investigators are not expected to draw any conclusions from their findings but it will be more difficult for the commissioning manager to determine whether or not to call a disciplinary hearing or later to come to an appropriate conclusion at hearing without an understanding of context.

When the Investigators have concluded their investigations they must prepare a report for the appropriate commissioning manager. This report will form the basis of any decision that manager makes regarding necessary action. The investigators will lay out the evidence in the report but will not make recommendations either about the need for a Disciplinary hearing or any suitable outcome. This role belongs to the commissioning manager.

5. Special Paid Leave

Periods of Special Paid Leave for alleged misconduct may have been put in place before the appointment of investigators – please refer to Section 18 of the Council’s Disciplinary Procedure. However, there may be occasions when, during the course of the investigation, investigators decide a period of special paid leave is appropriate. This may be because new evidence comes to

light in which an employee is implicated in something more serious than was first suggested/known. In this case the investigator(s) will recommend a period of special paid leave to the commissioning manager who will then, having taken advice from HR, determine whether this is necessary or not and arrange as appropriate.

If a person is put on a period of special paid leave he/she should always be given written confirmation (See template in Appendix)

All periods of special paid leave should not lead to any assumption of guilt.

6. The role of accompanying persons

Employees have the right to be accompanied at formal investigatory meetings. The accompaniment rights vary dependant on circumstances.

Where an employee is being investigated for potential disciplinary matters he/she may be accompanied by a Trade Union Representative or workplace colleague.

Where an employee raises a grievance and an investigation follows that employee's right to accompaniment is limited to a Trade union representative or a colleague.

Offers of accompaniment should also be given to witnesses in the investigatory process.

The representative may accompany the employee but may not answer questions on their behalf. Having said that they may speak up for the employee and generally act in a representative capacity. Also the representative may raise any procedural matters and request clarification of the process.

The responsibility to ensure that a Trade Union representative or colleague accompanies the employee at an investigation lies with that employee although if the representative is already known the investigating officer may want to contact him/her in advance of arranging a meeting date for reasons of efficiency.

The investigators will need to consider if the accompanying person an employee calls for is appropriate. If not the investigators will have the right of veto but they must explain the reasons to the parties involved. For example it may be that if an employee calls for a person who is going to be called as a witness in his/her own right then it would not be appropriate for that person to also act as an accompanying person as allegations put to an employee together with responses heard by the witness may influence the evidence the witness may later give him/herself. Another factor for the investigators to consider is the appropriateness of an employee calling upon his/her manager as a witness. This may be particularly important where allegations involve procedure and practice and that manager will be called to give account of his/her own expectations of employees.

7. Preparation for the investigation

Effective planning and preparation are key essentials of any successful investigation. Depending on the complexity of the matter(s) to be investigated a project plan may be a useful tool to adopt. (See template in Appendix.)

Investigations will frequently involve interviewing witnesses. The process of investigating an allegation may be stressful for some individuals and it is important to ensure everyone involved, including investigators themselves are supported as appropriate. Support should be arranged by the relevant line managers.

The Investigators should make clear to everyone what they are doing, what they expect and need, and focus on gathering evidence.

The Investigators should prepare a programme of meetings with the employees they need to interview and make appropriate arrangements with appropriate line management for the release of those employees to participate in the investigation process. Employees required for interview should be given a reasonable period of notice. (See template in Appendix). Once dates are known meeting rooms should be arranged, as these are always difficult to obtain at short notice.

As far as possible it may be useful to determine the order in which people are interviewed to avoid, wherever possible, having to interview the same person more than once. Depending on the circumstances, however it may be entirely appropriate to go back and interview someone again having gathered further evidence which may require more explanation/exploration. Managing expectations is an important part of this process and forewarning someone that there may be a need to see him/her again will help in this aspect.

Although investigators will not be able to fully predict the exact path of an investigation the more planning and preparation that takes place will enable them to better respond to any matters arising.

It will be usual to start the investigation with the complainant in order to elicit the precise details of their complaint.

If an employee is absent and this causes a significant problem, seek advice from HR. If the reason for absence is sickness the investigators will need to establish the likely recovery time. In cases of more lengthy absence HR may need to seek advice from Occupational Health about the fitness for someone to participate in the investigation process.

If an employee requests a postponement of the meeting because they are unable to get a Trade Union/Professional representative or work colleague to accompany them on the proposed date, a new date should be arranged which is mutually acceptable to all involved, provided the new date falls within 5 working days of the original date.

If there is no mutually acceptable date available within 5 working days of the originally proposed date then it is for managers, in conjunction with HR, to decide how reasonably to proceed.

Judgement needs to be exercised by the Investigators in proceeding with the investigation if employees or witnesses are not available to participate in an investigation, in circumstances where it would not be reasonable or appropriate to delay the investigation.

Written statements may be offered by people who are unwilling to take part in investigatory meetings although these are only usually useful in very straightforward cases and are not as helpful where further probing of an issue is necessary.

8. Documentary evidence

If documentary evidence has been identified as relevant at either the planning stage or later within the investigation the investigators will need to gather it. This may include for example gathering relevant corporate or departmental policies and procedures if allegations exist that suggest an employee has breached these.

Evidence may also take other forms. For example, in cases of alleged computer abuse, records of computer usage will be available from the IT Department. Computer records of various types are useful in determining different things, for example, fuel records or internet usage records.

Any anonymous written complaint or allegation must be handled and stored sensitively and appropriately.

Depending on the circumstances photographic evidence may be helpful, for example, to record the physical layout or the state/location of equipment.

Timesheets may prove useful where there are cases involving hours of duty.

The personnel file should also be checked to ensure there are no live warnings or other relevant information.

9. At the start of an investigation meeting

At the start of an investigation meeting with the employee under investigation or a witness, it should be made clear to the individual that: -

- the purpose of the meeting is to ask questions relating to allegations and record responses. The person to whom the allegations refer should be assured that no opinion has yet been reached as to the validity of the allegations or to the outcome of the investigation. Everyone involved in the investigation should be advised of the possible next steps.
- after the meeting he/she will be given a record of the meeting and asked to sign it as an accurate record or, alternatively, detail on the record any parts with which he/she does not agree, indicating their alternative version.
- he/she may be required to attend any subsequent hearings(s) either in order to formally respond to allegations that have been made against them or as a witness.
- he/she is required to maintain confidentiality on matters discussed. Any breach of this confidentiality could be deemed to be a disciplinary offence in itself.

Investigators should remember that the process of being interviewed in investigation is stressful for some individuals. This may be acknowledged. Explaining the procedure and likely timescales may help to allay some concerns.

Additionally investigators should be prepared to allow for breaks in the meeting and the interviewee and any accompanying person should be advised that breaks will be given on the request of any party.

10. Interviewing the employee under investigation

There is no prescriptive order in which to interview people. In potential disciplinary cases interviewing the employee under investigation first may save time if for example the employee admits to the allegations. However it may, depending on the circumstances, be better to interview others first to inform the discussion with the employee under investigation.

At whatever juncture the employee is interviewed it is important to capture the information needed later to complete a statement. For example name and job title etc. (See template in Appendix)

Investigators must give an employee the opportunity at the investigation stage to respond to any allegations against him/her and give their version of events including any reasons for the behaviour/conduct.

The investigators should advise the employee of the precise details of the allegations and give the opportunity for a response. For example it would not be sufficient to tell the person that there had been a complaint about misuse of equipment (as this is too broad and could mean anything) if the allegation was about alleged misuse of computer equipment by downloading appropriate material which is in direct contravention of the email and internet policy. Similarly it would not be sufficient to ask an employee if he/she is aware of any financial irregularities involving Client A if the allegation really is that that employee has been taking/borrowing money from the Client. The difficult question must ultimately be asked even if this is preceded by other contextual questions.

No copies of written complaints are given over at this stage nor will an employee about whom allegations have been received be given the names of the person(s) making the complaint. These details, where they exist, will be revealed if it is later determined that a disciplinary hearing will be held at which stage the employee, has the right to see all the supporting evidence. The important thing to focus on is did someone do/not do a particular thing and not who made the allegation about it. If the source is known then he/she will be expected to participate fully in the investigation

There are occasions when an allegation comes in anonymously. The anonymous allegation may be as valid as one from a known source. The important thing is that it will be the investigation which will inform the commissioning manager and help him/her decide on whether or not to hold a disciplinary hearing or take some other sort of appropriate action.

11. Interviewing witnesses

Witness statements should be taken as quickly as possible before memories fade. The Investigators will normally be entitled to interview any employee of the Council who they feel could provide any information to assist the investigation. There may be occasions however where people are reluctant to participate in an investigation. In these circumstances the Investigators may encourage participation but must not coerce people.

Reliable evidence is required in any investigation and there is always a chance with people who, for whatever reason, may not want to participate that their evidence may not be valid.

The investigators should make a record of anyone refusing to take part and note the reasons given.

If members of the public and /or employees of other organisations are interviewed it should be ensured that two investigators are present.

If it is necessary to interview children, permission will need to be sought beforehand from the parent/ guardian and if there is a need to interview either children or vulnerable service users the interviews should be conducted by someone with relevant professional experience with the investigating officer present as appropriate. The parent or guardian should be present in all circumstances where children under 16 have to be interviewed.

Witnesses should be informed at the start of the interview that if the case results in a disciplinary hearing, they may be required to give evidence. They need to be aware that anonymity cannot be guaranteed unless there is a genuine fear of reprisal.

The employee under investigation and witnesses can be interviewed more than once if further evidence comes to light.

Where there is more than one witness it is important that they are interviewed separately to ensure individual evidence and avoid the possibility of collusion. This will give the opportunity to find any similarities or differences in events and cross check these where necessary.

As with the employee under investigation, it is important that when witnesses are interviewed information needed to complete a witness statement is captured. For example name, and job title of the witness and their relationship to the employee about whom allegations exist. (See template in Appendix)

Full notes should be made at the time of the interview. At the conclusion of the interview it is best practice for witnesses to be invited to read through any notes the investigator has made and then sign them. Statements should be produced and taken back to the witness for signature. The original notes on which the statement was based must be retained until the conclusion of any hearing or subsequent appeal.

Investigators have to distinguish between those witnesses who have first hand knowledge of the incident/complaint and those who only have indirect or "hearsay" knowledge of it. In the simplest terms someone who says, "I saw that person doing something in particular" is going to be much more reliable than someone who says, " I heard that that person did something in particular". There is little value in this type of indirect evidence except where it may confirm or contradict someone else's evidence e.g. Person A says Person B was there and Person B denies this.

Opinion should only be relied upon where it is given in a professional capacity, for example, an auditor's opinion on a matter of fraud.

The sort of information that should be sought from a witness includes:-

- What the witness actually saw/heard
- When and where he/she saw/heard it
- Whether he/she could see clearly (it may have been dark or was at distance)
- Whether he/she could hear clearly (it may have been noisy)
- Could the witness be mistaken about these events

- Any circumstantial evidence such as why the witness happened to be where he/she was and what he/she may have seen/heard leading up to the incident and
- Whether there was a reason why the evidence may be tainted, for example because the witness has a personal grudge against the person under investigation
- What was his/her own understanding of formal procedure and practice
- How did custom and practice match up to the formal way
- What circumstances, if any, would warrant deviation from procedure
- What does he/she know of any influencing factors the employee may have been under
- What is the personal relationship to the employee i.e. friend/colleague
- Is the witness on good terms with the employee
- Were actions out of character
- Can any reasons be suggested for conduct

12. Telephone interviews

Whilst not recommending these as the norm these may prove to be a speedy and effective way of obtaining information from witnesses should communications difficulties exist or for example if witnesses are not local. Best practice would indicate that face to face interviews are preferable and telephone interviews should only occur in circumstances where it is important to speak to someone who cannot attend for interview.

As a matter of protocol if the investigators determine that a telephone interview will suffice then similar provisions should be made as would exist in a face to face interview. The witness should be first contacted to make him/her aware of the request and a time agreed to call back and discuss the matter. Arrangements may need to be made by either the investigating officer or witness for privacy and appropriate time put aside to take the call.

Notes should be taken of the call and transcribed onto a witness statement. The witness should then be afforded the same opportunity to agree or amend this statement.

13. General Questioning techniques

Investigators should ask for advice from HR on questioning techniques if they have not been trained in this area as the value of an effective investigation relies heavily on what the employee and witnesses say. The responses given to investigators will often depend on the formation of their questions and the depth and breadth of questions asked. If the questioning is weak this may result in an ineffective investigation.

Whilst investigators should have some prepared questions before starting an investigation meeting this does not mean that further questions should not be asked of either the employee or witness on an individual basis in relation to responses given or information supplied. Whilst investigators may prepare well in terms of what questions to ask it would be unlikely that additional questioning will not be required.

Questioning should be therefore thorough but the person being questioned should be made to feel as comfortable as possible.

Direct questions should be asked. If a question are so vague e.g. "Can you think of any complaint that has been raised against you" it may not have any value.

It is important that the employee or witness is allowed to do most of the talking to enable the investigators to elicit as much information as possible. Interruptions should be avoided when

accounts are being given, other than to prompt as necessary. For example “....and what happened then?” “You said such and such.....can you explain that in more detail?”

Questions that are likely to help gain information:

Open: introduces a general area of questioning which require explanations;,
e.g. “describe what you saw on that day”

These type of questions encourage a detailed response and are helpful in obtaining information and assessing capability.

Probing: finds out what lies behind a statement:

e.g. “What exactly do you mean by that?” “...” “When was this?”..... “what did you think of that?”..... “Why was that”

These questions elicit more specific information and allow you to explore important or uncertain points.

Closed: checks facts.

e.g. “How many times did you see that?”

These questions can help focus an evasive or verbose individual. They are useful for confirming information and establishing facts.

Questions to avoid:

Leading: encourages a person to answer in a particular way:

e.g. “You saw that person approach his colleague – did you think he was going to strike him?”

The answers to these questions are less reliable as the question indicates the answer expected.

Multiple: asks several questions at once:

e.g. “Can you tell me how you dealt with an angry pupil, what the outcome was and how you would tackle a similar problem again?”

These questions are confusing and the person is unlikely to be able to remember everything you have asked.

Hypothetical: asks a person how he/she would handle a particular situation:

e.g. “How would you deal with a difficult pupil?”

People are unlikely to be able to imagine the situation in its real context and their answer will be based on how they think you should handle the situation, not what they would do in reality. Instead ask them to describe situations they have encountered and how they behaved.

e.g. “Have you ever had a similar situation to deal with?”.....”What did you do?”

Discriminatory: questions about childcare, domestic and personal circumstances and health. For example, in an investigation over a female employee's grievance involving hours of work a question such as "Did you leave early because you have childcare responsibilities?" may be viewed as discriminatory. This is because the woman may assume that childcare and other family commitments are viewed as having a negative impact on her motivation, commitment to the job, attendance or availability to work overtime. Because such discriminatory assumptions would not be likely to be made about a male employee, questions of this nature are viewed as discriminatory on the grounds of gender. It would suffice to ask "Why did you leave early?"

Any questions which could be viewed as discriminatory on the grounds of sex, religion, disability, sexuality, faith, gender, etc must be avoided.

14. During the course of the meeting

The individual does not have the right to ask questions of the investigators, other than ones relating to the investigation process itself or for points of clarity.

The Investigators should not get into debate or argument with the individual or his/her representative. Where such issues arise investigators should take a note of what is said but not offer an opinion.

During the course of the investigation the Investigators may recall the employee being investigated or any witnesses to obtain clarification on any points or ask further questions if other events are brought up during the course of the investigation.

15. Surveillance

It is important that no form of surveillance should be started in connection with an investigation without reference to HR or Legal Services as there are legal issues involved.

This not only covers surveillance involving third party investigators but also when instructing other employees to take on surveillance activities. Written permission is required from Legal Services before any covert surveillance is undertaken.

Overt surveillance is surveillance done in plain view, for example when a manager goes out to visit some workers and openly observes (i.e. the workers are aware of being observed) what is being done. Covert, is by definition, secret and thus covert surveillance is not conducted with the knowledge of the observed. It could still entail a manager going out to observe employees but doing so with the intention that he/she will not be seen in order to witness what the employees do when they are not being supervised and have no knowledge of being observed. It is this latter form of surveillance that requires written permission in advance.

If a manager wishes to know what activities an employee is conducting via email/internet a request will need to be made to IT with written authority given by an appropriate Director

16. Confidentiality

The fact that an investigation is taking place is not in itself confidential information. However information gathered through an investigation process should be treated as confidential.

Interviewees should be reminded of the need for confidentiality both before and after investigatory interviews although this will not preclude discussion with Trade Unions and /or legal advisors.

Another aspect, which should be taken into consideration, is that there may be some information gathered in an investigation, which should not be allowed to go into the public domain, such as specific medical details or information about clients. Whilst the investigation and any subsequent disciplinary hearing /appeal are internal processes there is always the possibility that ultimately any written report may be produced in a public forum such as an Employment Tribunal. All confidential information of this nature should therefore be deleted from the investigatory report and referenced by some other way. For example in an investigation in Social Work where clients are involved they must be referenced Client A, Client B etc. rather than by real name.

17. Data Protection Act

Investigators should note that the Data Protection Act applies to personal data processed in relation to investigations.

This means that individuals have a right to see information concerning them. If requests are received responses should be given even if there might be an impact on the investigation or on any forthcoming proceedings. The only reason not to respond would be if a response were likely to prejudice a criminal investigation.

In order to ensure investigations comply with the requirements of the Data Protection Act it should be ensured that:-

- No evidence is gathered by deception
- Records used in the course of investigations are of good enough quality to support any conclusion drawn from them
- Records are kept securely
- Unsubstantiated allegations are removed unless there is an exceptional reason for retention

Investigators should not retain information about employees because it might have relevance to the investigation if it is either

- Incompatible with the purpose the information was gained for, or
- Disproportionate to the seriousness of the matter under investigation

18. Documents and emails

Transcripts of telephone conversations/meetings may form part of the investigation. Contemporaneous notes (i.e. notes taken at the time of a conversation/meeting) tend to have more credibility than notes that are written up at some later time.

Copies of emails may also form part of investigatory evidence.

Any other written evidence should be logged and entered into the Investigating Officer's report with a clear audit indicating author, date and status.

19. Statements

Occasionally the Investigators may receive a request from a person being investigated, from a complainant or from a witness that an investigation should be taped. It is not the Council's practice to allow the taping of conversations, as this suggests some sort of mistrust, and any such request should normally be refused. Exceptions are made if a request relates to a disability. If this is the case clarity should be sought from Occupational Health that taping would be the most appropriate adjustment and is reasonable in terms of addressing the disability.

Investigators will, within a reasonable period of time following a meeting with the employee/witness, draw up a record of the meeting. (see statement templates) This record will reflect what questions were asked along with the responses. Individuals will be given this record of their own interview and after been given sufficient time to go through it will be asked to sign it to confirm that it represents a true record.

Individuals should be informed that any record of their investigation meeting/statements may be referred to in any future action and that they may be required to attend any hearing that is necessary.

20. Disputed record of investigation meeting

The Investigators should, wherever possible, ensure that the content of any witness statements/record of meeting is agreed with the individual concerned. In the event that a record of an investigation meeting is disputed by the individual concerned, the Investigators should:-

- either amend the notes (if they agree with the individual's proposed amendments) or
- endorse the notes to the effect that the individual disputes the Investigators' version (highlighting the areas under dispute).

21. Evaluation

The Investigators should review all the evidence gathered to determine if any gaps are evident. If there are these areas may need to be revisited before finalising a report

The investigators should in their findings be able to conclude on whether there is evidence of the allegations or not or whether there is any dispute surrounding any particular allegation. Absolute certainty will not always be possible and it will be acceptable to record a conclusion that is based on the balance of probability, having weighed up the evidence gathered.

It is not the role of the investigators to recommend whether or not a disciplinary hearing should be held and neither should they recommend action of any sort, formal or informal. It is the role of the commissioning manager to decide whether or not a hearing should be held and any formal disciplinary action should only come from a hearing.

22. Reporting

When the investigation is concluded the Investigators should prepare an investigation report for the commissioning manager. (See template in Appendix)

The report should include:

Confidential marking

Draft or final report marking

Date prepared

A Glossary of Names and Abbreviations

An introduction.

The name(s) of the Investigating Officer(s).

Process undertaken.

People interviewed.

Any specialist advice taken.

The initial allegations

Any further allegations which came to light during the investigation and were included in the investigation because they were relevant to it.

Details of any relevant Policies and Procedures that may have been breached

Findings of fact :-

- Evidence to support the allegations
- No evidence to support the allegations
- Any conflicting evidence regarding the allegations

Any explanation/circumstances in mitigation.

All supporting documentation

There may sometimes be other issues of a more general nature, such as deficiencies in policy or procedures, which have come to light as a result of an investigation. Where these have a wider aspect and do not relate directly to the employee the investigators should not include them in their investigation report. These aspects however should not be lost and the investigators should write a separate memo recording any issues they feel merit the attention of the commissioning manager and HR.

23. Outcome of the investigation

The commissioning manager will be responsible for making any decision based on the investigation report.

This decision may include

- A disciplinary hearing to determine disciplinary action or
- Some other form of management action
- No action

The manager at this stage should simply consider the report in making that decision and should not seek to interview witnesses or take representations from the parties involved.

If the commissioning manager feels that the report has omitted relevant details he/she may refer the report back to the investigators for more facts to be gathered.

Whilst the report may contain details of findings of fact which either support the allegations or not the commissioning manager is free to decide whether to accept these in calling a hearing. For example the report may conclude that there was insufficient evidence of an allegation but the manager may still decide to call a disciplinary hearing in order to hear some of the evidence first hand. If this is the case the commissioning manager must record in writing his/her reasons for doing so and if appropriate take advice from HR, in order to avoid accusations of persecution or bias.

The evidence obtained in support of an employer's case does not have to prove the matter "beyond all reasonable doubt", as would be the case in criminal proceedings. The employer may take action if, after sufficient investigation, there are reasonable grounds to believe an offence has been committed and this is substantiated by evidence.

The commissioning manager will inform the employee(s) of the outcome of the investigation including whether a disciplinary hearing will be called or not.

If a disciplinary hearing is called this must be done in accordance with the Disciplinary Procedure and all supporting documentation gained through the investigation, including the investigation report must be given to the employee in advance of the hearing.

Where following an investigation no further action is to be taken in terms of the disciplinary procedures then all references to the investigation should be removed from the employee's personal file.

24. Presenting the investigation at a hearing

It is the practice for investigators to be called to present their findings at a disciplinary hearing. The key to this is preparation. Before the hearing the investigators should write out their presentation. It should include a summary which captures the essence of the evidence relating to the individual.

Investigators may choose to call witnesses if they believe that a witness may be able to better portray some particular evidence from a first hand perspective. This may be especially useful for the chair of the hearing where evidence is not consistent as it will allow the chair to probe matters him/herself in order to take a more balanced view of matters. If investigators decide to call witnesses they should prepare in advance, as far as they are able, the questions they wish to ask them.

25. Access to investigation report

If the commissioning manager determines that the issue is to be considered at a disciplinary hearing the employee being investigated will be given a copy of the investigation report together with its supporting evidence as part of the documentation made available to him/her.

No documents relating to the investigation should be placed on the employee's personal file. The documents should be held in a separate, secure and confidential location to ensure the Council meets its obligations in data protection. Only in exceptional circumstances will these documents be further referred to for employment purposes concerning the employee.

Where the investigations concern matters relating to the safety and well being of young people and/or vulnerable adults in receipt of client services the documents shall be available for inspection by the employee and the employee may add a personal note to the record. If there is further disciplinary investigation relating to the employee, the documents should be examined and, where considered relevant may be taken into account to the extent required by the circumstances of the case. Where a previous allegation is taken into account in any disciplinary decision, the written notification shall indicate this fact and the reasons for doing so.

In the case of disciplinary matters arising from a grievance/complaint the complainant is not entitled to receive a copy of the report, but is entitled to know whether or not the matter will

be pursued in accordance with the appropriate Scottish Borders Council procedure. For reasons of confidentiality the complainant must not be given any details of outcome, other than that appropriate action has been taken. (even if that action did not include disciplinary action)

26. Anonymous reports/unsigned statements

Occasionally information is received anonymously. Any anonymous letters/statements should be treated with some caution and any such material received should be immediately placed into a clear plastic wallet. This would enable the police to later examine the letter for finger prints if this became necessary (for example if it transpires that the letter is malicious or worthy of police investigation).

Information received anonymously is still valid and may still lead to an investigation which provides information on which further decisions can be based.

Anyone against whom an anonymous allegation is made should be informed that a complaint has been received and be invited to comment. A response may lead to other people being included in the investigation.

Depending on the nature of the allegation there may also be documentary evidence that can be examined which would either substantiate the allegations or not.

The final outcome of any investigation or discussion should be recorded, in writing.

27. Third party evidence

Some investigations may involve taking third party evidence from members of the public, from councillors or from other persons, for example, contractors. The same principles should be applied to third party evidence as is applicable to other evidence.

28. Police enquiries

The fact that a police investigation is taking place does not usually mean the postponement of a management investigation and/or subsequent hearing.

The important thing to note is that no action should be taken which might prejudice/undermine a police enquiry. If there is any suggestion that either the management investigation/hearing should be postponed this must be discussed with HR/ Legal in order that appropriate correspondence can be set up with the Police/Procurator Fiscal to enable an audit trail to be established.

29. Discrimination/harassment

In dealing with investigations into particularly sensitive cases of discrimination/harassment the investigators may wish to consider whether or not it is possible to try and match the gender of the complainant. For example if a woman complains of extreme sexual harassment from a man then the complainant may be more comfortable being interviewed by another woman rather than a man. In all cases the investigators should always be sensitive to the issues involved.

30. Whistleblowing/code of conduct for employees

Some investigations may arise as a consequence of “whistleblowing”. If this occurs, please advise the Internal Auditor for monitoring purposes and seek advice from HR.

31. Contacts

HR:-

Contact the relevant HR Business Partner on 01835 825052/3 or at askhr@scotborders.gov.uk

GUIDELINES ON CONDUCTING INVESTIGATIONS

Sample letters/reports



1. Sample investigation plan.....	20
2. Sample letter for special paid leave.....	21
3. Sample invite to investigatory meeting	23
4. Note of Investigation Meeting	
4. Witness statement	
5. Statement from person under investigation	
6. Investigatory report	

Investigation plan	
Details of allegation	
Commissioning manager	
Relevant documentation e.g. Disciplinary/Grievance Policy & Procedure Codes of Practice/ Policies	
Complainant advised of right to have union representative or workplace colleague and date	
People to interview	Scheduled dates for interview
Complainant	
Person(s) complained about	
Witnesses	
Specialist advice e.g. legal	
Action plan Detail proposed approach- interviews, gather documentary evidence etc.	
Target date for completion	

Revision to target date with reasons

PRIVATE & CONFIDENTIAL

Please ask for: Manager's name

Ext.

Name
Address

Your ref:

Date:

Dear

CONFIRMATION OF PERIOD OF SPECIAL PAID LEAVE

Further to our meeting on (date), this letter confirms that, in accordance with the Council's Disciplinary Procedures for Misconduct, you are on a period of special paid leave for the following reasons:

This period of special paid leave started on *date* and is expected to end on *date*. You are to remain away from work until further notice. Please do not attempt to attend work or influence anyone who may be involved in the investigation process unless you want them to support you as an accompanying person. Every effort will be made to investigate this alleged gross misconduct fairly and promptly. Your period of special paid leave is part of that process, and does not imply in any way that you have committed the offence. Your contract of employment remains intact.

(insert if appropriate) Bearing in mind your role requires an Enhanced Disclosure through Disclosure Scotland and is guided by the Scottish Social Services Council Codes of Practice for registered and non-registered workers I will therefore have to give consideration to whether I am obliged to inform them of your period of special paid leave and the reason for it. Consequently you may be contacted by the appropriate body. Additionally I would remind you of your own obligations in this regard to inform them yourself of any relevant changes regarding your employment status that may impact on your professional standing.

As part of the investigation, you will be contacted soon to attend an investigatory meeting so please remain contactable. You have the right to be accompanied by someone, who must be either a workplace colleague, an accredited trade union representative (who is certified as

being trained or experienced in being a representative for disciplinary hearings) or an official employed by the trade union. All reasonable requests will be approved.

Your contract of employment and all normal employment procedures still apply. For example, if you want to go away or are sick during this period please contact me / your line manager to enable the necessary authorisation/documentation to be given/completed. You will continue to be paid during this period.

I appreciate that this time may be stressful for you. As discussed at the meeting I have arranged for (Name/title) to be a Contact Person for you. (He/she) has agreed to this but I must make it clear that (he/she) has not been given any detail of the reasons for your period of special paid leave and will not take part in the investigation in any way. Consequently (name) will not be able to give opinion on the matters under investigation but will however be able to act as a general support to you and answer any questions you may have regarding such things as process, procedure or timescales. You may contact (name) either by phone/email (insert contact details)

I would like to draw your attention to the free professional confidential counselling service which is available to all employees. If you feel that you would benefit from this you may refer yourself by telephone (freephone 0800 882 4102) or by visiting the P.A.M. Assist Website www.pamassist.co.uk. The log in details are:

Username: Borders
Password: Council

I enclose a copy of the Council's Disciplinary Procedure for your information. If you require any further clarification please do not hesitate to contact me.

Yours sincerely

Name
Title of Line manager

PRIVATE & CONFIDENTIAL

Please ask for: Name

Ext.

Our Ref:

Date:

Dear Name

INVESTIGATORY MEETING

. I would be grateful if you could attend an investigatory meeting

on **date**

at **time**

in **venue**

The purpose of the meeting will be to investigate a complaint that } insert details of allegation/complaint. (For witnesses, substitute this sentence with: *You are being called as a witness*).

I will be assisted at this meeting by (*name, job title*). The investigation is being carried out in accordance with the Disciplinary policy and procedures for misconduct (a copy is enclosed). You have the right to be accompanied by an accredited trade union representative or work colleague, although you should understand that this is an investigatory meeting and not a disciplinary hearing. All reasonable requests will be approved.

Please confirm your attendance at this meeting and the name of your accredited trade union representative/ accompanying workplace colleague at your earliest convenience.

Yours sincerely

Name

Title

Enc.

cc: (Name of person also to be present at meeting)
HR

1. NOTE OF INVESTIGATION MEETING

CONFIDENTIAL

NOTE OF INVESTIGATION MEETING

Date of meeting:

DETAILS OF INTERVIEWEE

a) Incident under investigation:

b) Name of interviewee:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

c) Name of interviewee's accredited trade union representative/ workplace colleague, if any:

Job title / Name of trade union:

DETAILS OF INVESTIGATING OFFICERS

a) Name:

b) Name:

Job title:

Job title:

Relationship to
person under
investigation:

Relationship to
person under
investigation:

SUMMARY OF INVESTIGATION

Briefly summarise the reason for the investigation (eg the nature of the complaint):

(Name of investigating officer) opened the meeting by introducing everyone present before giving a brief explanation of the reason for the meeting and the procedure to be followed. The following questions were asked:

Q1. Details of question:

Summarised response:

Q2. Details of question:

Summarised response:

(Continue to list all questions)

QX. Do you have anything more to add in respect of this matter?

Summarised Response

5. DECLARATION

I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.

I understand that I cannot discuss these proceedings with anyone other than my accredited trade union representative/ accompanying workplace colleague, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.

I declare that my contribution to this investigation meeting has been accurate and true. I have been given a copy of my statement to check its accuracy and to make any amendments or comments if I disagree with it. I accept that if I do not sign, or return comments within the given timescale, then the statement may still be used

Interviewee's signature:

Date:

Investigating officer's signature:

Date:

Investigating officer / Note taker's signature:

Date:

2. STATEMENT FROM WITNESS

NOTE: If the witness is unavailable for interview, s/he can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

CONFIDENTIAL

INVESTIGATION STATEMENT

DETAILS OF WITNESS

a) Incident under investigation:

b) Name of witness:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

DETAILS OF INVESTIGATING OFFICERS

a) Name:

b) Name:

Job title:

Job title:

Relationship to
person under
investigation:

Relationship to
person under
investigation:

MY STATEMENT

DECLARATION

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative, and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

3. STATEMENT FROM PERSON UNDER INVESTIGATION

NOTE: If the person under investigation is unavailable for interview, s/he can complete an investigatory statement instead. In some instances, the investigating officer(s) may wish to have both an interview and statement.

CONFIDENTIAL**INVESTIGATION STATEMENT****DETAILS OF WITNESS**

a) Incident under investigation:

Job title:

Department:

Date employment started with SBC:

Date employment started in post:

Relationship to person under investigation (*co-worker etc*):

DETAILS OF INVESTIGATING OFFICERS

a) Name:

b) Name:

Job title:

Job title:

Relationship to
person under
investigation:

Relationship to
person under
investigation:

MY STATEMENT

I declare that:

- I understand that I may be required to clarify points raised during the investigation.
- I understand that the report and statements are confidential to the investigation and any subsequent disciplinary hearing.
- I understand that I cannot discuss these proceedings with anyone other than my representative or immediate family members (provided that I ensure they retain confidentiality), and I must not attempt to influence anyone involved in this matter. If I breach this or provide untrue or misleading information to the investigation, I may be subject to disciplinary action.
- This statement is a true and fair account.

Employee's signature:

Date:

4. INVESTIGATION REPORT

NOTE: The content of this template is an example only and should be varied to suit each case.

CONFIDENTIAL**INVESTIGATION REPORT****REPORT OVERVIEW**

- a) Report to: *(Name of commissioning manager)*
- b) Date report completed:
- c) Report from the following investigating officer(s):
- | | |
|---|---|
| Name: | Name: |
| Job title: | Job title: |
| Relationship to person under investigation: | Relationship to person under investigation: |
- d) Name of person under investigation:
- | | |
|-----------------------------------|----------------------------------|
| Job title: | Department: |
| Date employment started with SBC: | Date employment started in post: |

SUMMARY OF INVESTIGATION REMIT

Briefly summarise the reason for the investigation (eg the nature of the complaint):

THE REPORT**Contents**

1. Introduction
2. Background
3. Investigation

4. Summary
5. Appendices
 1. Statement / note of meeting with the person under investigation
 2. Witness statements / notes of meetings
 3. Other relevant documentation – eg emails, correspondence etc.

1.0 INTRODUCTION

(Names of investigating officers) were commissioned by *(Name of manager, job title)* to investigate the complaints and report their findings to *(Name, job title)*.

If in the process of the investigation, further complaints or allegations came to light, *(give details of the complaints or allegations)* and, under advice from *(name of commissioning manager)*, they have been included here as they are relevant to the case.

2. PROCESS

The investigation commenced on *(date)* and finished on *(date)*.

The people interviewed were:

- | | | |
|----|-------|------------|
| 1. | Name: | Job title: |
| 2. | Name: | Job title: |
| 3. | Name: | Job title: |
| 4. | Name: | Job title: |

Specialist advice was sought from HR/Legal Services on the following:

-
-
-

3. INVESTIGATION

Outline the investigation eg briefly recap of what prompted the investigation, who was involved, why the witnesses were selected, why the questions were chosen, evidence that supported or conflicted with other evidence, the nature of other evidence collected (e.g supporting documents) etc

Allegation number 1: *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

-
-

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

-

The investigating officer(s) found insufficient evidence to support this allegation because:

-
-

Allegation number 2: *(specify the allegation or complaint)*

The investigating officer(s) found that there was evidence to support this allegation because:

-
-

The investigating officer(s) found that there was conflicting evidence in respect of this allegation because:

-
-

The investigating officer(s) found insufficient evidence to support this allegation because:

-
-

The Investigators found no evidence to support this allegation

Allegation number 3: *(specify the allegation or complaint)*

Continue as above

4. **SUMMARY** *(The investigating officer must not make recommendations – the manager is responsible for assessing the investigation (eg whether more information is needed at this stage) and deciding whether to proceed to a disciplinary hearing.)*

Investigating officer's signature:

Date:

Investigating officer's signature:

Date:
