

Guidance Document 2

Guidance for Conducting an Investigation

Terms of Reference

Terms of Reference should be drafted by the Commissioning Officer, clearly explaining the Investigating Officer's role and responsibilities for the investigation. The Terms of Reference should include:

- What the investigation is required to examine.
- Whether a recommendation is required.
- How the findings should be presented. For example, an investigator will often be required to present their findings in some form of investigation report.
- Who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed. This might be HR or a similar experienced and informed source.
- Any applicable timescales.
- The relevant policies, procedures, or protocols that need to be considered.

Note: It is possible that the terms of reference may have to be modified as the investigation develops. Any changes should be made in consultation with the Commissioning Officer.

Consideration of Suspension

Suspension is intended to facilitate the investigation process and is not a punitive action. There is no inference of guilt where a staff member is suspended, and normal remuneration will be maintained. Appropriate support for the staff members health and wellbeing will be provided as necessary.

Staff may be suspended from work by the Commissioning Officer (or other appropriate individual) at any stage of the Investigation Procedure while the University investigates the alleged matter. Suspension may be appropriate in the following circumstances:

- where the Head of School/Section or the Commissioning Officer (or other appropriate individual) considers that continuation at work may be prejudicial to the ongoing investigation and/or detrimental to the work of the School/Section, students or University property
- where the health and safety of the staff member or others may be adversely affected by continuation at work
- the Member of Staff Under Investigation is the subject of criminal proceedings.

Suspension is for no longer than 4 weeks in the first instance, ideally during which time the investigation will be undertaken. The period of suspension will be kept under review and staff will be notified if an extension is necessary to complete the investigation.

During suspension an individual's access to University buildings emails and shared drives may be removed. If this is the case, it will be confirmed by the Commissioning Officer or other appropriate person.

Appointment of Investigating Officer

Please note that when the HRR and Commissioning Officer are reviewing appropriate individuals to investigate the case, for allegations that fall under the definition of GBV, the IO

must be from an independent School/Directorate/Institute, ie – not from the same area as the Complainant or Member of Staff Under Investigation.

Investigation Plan

The Investigating Officer's role is to establish the facts of the alleged case so that it can be determined whether there is a case to answer. They should investigate all aspects of the allegation/s, incident, complaint or issue. The Investigating Officer should start by making an investigation plan by referring to the template provided by the HRR. This should include:

- what needs to be investigated
- Determine background information, how long complainant and respondent have been in post for.
- Determine the relationship between the complainant and the respondent in the University and the responsibilities they both hold within the University
- Review if mandatory training has been completed by all parties involved (if relevant to allegations)
- anyone who needs to be spoken with ('witnesses')
- any sources of evidence, for example work records, emails or CCTV recordings (ref CCTV Policy for further guidance)
- any time limits, for example CCTV footage being deleted or staff going on leave
- timeframes
- policies or guidelines to follow
- setting out the importance of confidentiality
- any other relevant points or information.

The Investigating Officer should:

- be fair and objective
- follow appropriate University policies or guidelines
- obtain as much information on the case as is reasonable
- not try to prove guilt, but get balanced evidence from both sides
- keep the case confidential.

In investigating a staff member's alleged misconduct, the Investigating Officer may:

- examine any relevant written records, for example previous disciplinary warnings, or similar investigations, appraisal reports, and Line Manager's notes;
- check whether there are any earlier warnings that have not expired;
- consult any other managers with whom the Staff Member Under Investigation has come into contact with to help establish relevant facts;
- talk privately and in confidence to staff members who may have evidence relating to the Staff Member Under Investigation alleged misconduct or who may have been witness to any relevant incident, and produce an accurate written summary of such evidence;
- seek the consent of any such staff member/witness to use the summary of the evidence collected as a written statement which may be made available to others involved in the investigation as appropriate;
- conduct an investigatory interview with the Staff Member Under Investigation, making sure that the staff member knows that the purpose of the interview is to establish the facts and that the interview is not part of the University's disciplinary procedure; and

- take an objective and balanced view of any information that comes to light, and avoid allowing personal views, opinions, and likes or dislikes to influence the assessment of the staff member's conduct.
- plan in advance what questions need to be asked (Please refer to Guidance on Handling Difficult Questions/Questions Suggestions [\(Appendix 6\)](#))
- In a potential grievance, make it clear to the complainant that their complaint will be sent to the person they are complaining about.

Taking a witness statement

A witness statement will usually be an agreed copy of the minute from an investigation meeting. A witness should be given a copy of their statement, taken at the investigation meeting, to check that they agree it is accurate. This should be done as soon as possible after the meeting.

The Investigating Officer might decide a witness can give a statement without having a meeting, if the witness:

- is not a staff member,
- only needs to give very simple information
- requires this adjustment for medical reasons

The Investigating Officer should ask the witness:

- their name and, where applicable, job title
- the date, place and time of any relevant issues
- what they saw, heard or know
- the reason why they were able to see, hear or know about the issues

The witness should have reasonable time to give the statement.

Witnesses should be advised that they are not permitted to discuss the investigation with other members of staff or third parties and, where appropriate, be reminded of their duty to maintain confidentiality. Amongst other things it is important to minimise the risk of witnesses discussing or agreeing what their evidence should be, thereby tainting the conclusions of any investigation. If a staff member breaches confidentiality, consider whether the breach is sufficiently serious to warrant disciplinary action.

Confidentiality

An investigation should usually be kept confidential. Even if it becomes known that an investigation is being conducted, the details of the investigation should be kept confidential.

Throughout an investigation stringent confidentiality should be maintained. This duty applies to both the Investigating Officer and to any witnesses.

Sharing information and confidentiality

When getting information from a witness, it should be made clear that the information will be shared and will be made available to the Staff Member Under Investigation and the witness's consent to share it should be obtained.

On rare occasions it may be necessary to withhold part or all of a witness statement to protect the identify of a witness. However, any decision to do so must also always take into consideration the potential impact on the Staff Member Under Investigation.

Investigation reports will be stored in line with the University's record retention schedule and in accordance with the General Data Protection Regulations. (GDPR).

Talking to a large number of witnesses

If a large number of people witnessed the same incident, the Investigating Officer may talk to a sample of witnesses and check whether their accounts of the incident are broadly consistent. It may not be necessary to talk to all witnesses, unless the Investigating Officer deems that there is a lack of consistent information or more information is required.

Witness statements/ minute of meeting for disciplinary hearings

Where disciplinary proceedings are instigated following an investigation and where evidence about a Staff Member Under Investigation alleged misconduct has been obtained from third parties in the form of written statements, either the statements themselves or a summary of their content will be given to the Staff Member Under Investigation. However, the University reserves the right to conceal the identity of any or all of the parties if there is a legitimate reason to do so, such as where there may be a risk to the safety of others if the identity of witnesses is disclosed. In those circumstances, the University will consider providing a summary of the information to the Staff Member Under Investigation.

Investigation Report

Once the investigation has been completed the Investigating Officer may prepare a report based on the template provided by the HRR including:

- The name and job title of the Commissioning Officer
- The name and job title of the Investigating Officer
- A brief overview of the circumstances that led to the investigation.
- The Terms of Reference of the investigation and if they were amended.
- The investigation process followed, including:
 - How the investigation was conducted.
 - What evidence was collected.
 - Whether any pieces of evidence could not be collected and why.
- The names and job titles of all witnesses and why each witness was relevant to the matter.
- Whether any witnesses could not be interviewed and why.
- The investigation findings, including a summary of the:
 - Findings from all relevant documents.
 - Key evidence from each witness statement.
 - Facts that have been established and, what facts have not been established.
 - Mitigating factors to consider, if any.
- The report's conclusions, including the Investigating Officer's recommendations based on all evidence collected and any other recommendations related to the matter.
- Copies of all documents and witness statements collected and referred to in the report.

After the investigation

The Commissioning Officer will inform the Member of Staff Under Investigation / Complainant of the outcome of the Investigation.

Where the decision is to progress to another process, the member of staff will be given details in writing of the case against them and advised of the next stages of the process to be followed, which may include being invited to attend a disciplinary hearing. The Disciplinary Procedure is available on the Policy Zone.