



## **Guidance for Managing Formal Investigations (For use with Disciplinary, Grievance and Dignity and Respect Procedures)**

### **1. Scope**

Managers within the University may be asked to carry out formal investigations as part of a range of employment policies and procedures. This guidance should be adhered to in all cases where a formal investigation is required. The underlying principles for managing investigations are:

- Investigations should be carried out promptly, avoiding delays in meetings or conveying of outcomes
- Every effort should be made to handle investigations consistently and equitably
- All matters under investigations will be treated with due confidentiality and sensitivity.

Guidance on the appointment of Investigating Officers can be found in the policy under which the Investigation is to be carried out.

### **2. The Investigating Officer's Role**

The Investigating Officer must not have any conflict of interest or prior involvement in the case, and carries out the investigation with autonomy from the department or unit in which the case is based.

The main purpose of their role is to objectively establish, in so far as is reasonably possible, the facts of the matter. They should collect and test evidence in order to achieve a holistic view and where appropriate, decide if there is a case to answer.

Investigations should be carried out as quickly as possible and in the timescales set out within the relevant policies and procedures.

Before beginning an investigation, Investigating Officers must familiarise themselves with the relevant policy or procedure under which the investigation is to be carried out, in addition to the guidance within this document. They should read this guidance in conjunction with the Guidance for Handling Formal Meetings.

The Investigating Officer may also meet with the HR Advisor dealing with the case at the outset to clarify all aspects of their role as outlined in the relevant policy or procedure.

The Investigating Officer must ensure that they are clear about the remit of their investigation. For example, if the matter is a disciplinary issue, the Investigating Officer must be sure that they understand the allegations. If there is any uncertainty, then they must refer back to the person who appointed them for clarification before beginning their investigation.

If during the course of the investigation a student or member of the public raises a complaint through the University Complaint Handling Procedure (CHP), the Investigating Officer should familiarise themselves with the CHP and seek advice, if necessary.

Investigations can involve small scale issues, where only one person needs to be interviewed, to large scale or complex problems, where a large number of people need to be interviewed, or where there is a great deal of documentation. In all cases, the Investigating Officer should identify those people they wish to speak to at as early a point as possible so that arrangements for interviews can be made as quickly as possible.

In addition, they may wish to arrange for paper / electronic evidence to be considered in their investigation, and should make arrangements to obtain it as soon as possible.

Investigations carried out should be proportionate to the matter under investigation, e.g. interviewing large numbers of witnesses in relation to an allegation of poor time keeping would not be appropriate.

Investigating Officers will normally be required to participate in any formal hearings resulting from the investigation, in order to present or explain their findings.

### **3. Support for the Investigating Officer**

Dependent on the scale or complexity of the issue under investigation, there may be times when the Investigating Officer needs to enlist the help of a colleague for support during interviews. In these circumstances, they should speak to the HR Advisor dealing with the case who will arrange to make a suitable appointment, ensuring that any colleague appointed has no involvement in the matter under investigation, and that there is no potential conflict of interest.

In any event, Investigating Officers should always have a note taker present during interviews.

### **4. Carrying out Interviews**

It is important to speak to any witnesses and respondent(s) as soon as possible after the event to capture the information whilst it is fresh in people's minds.

Generally, the order in which interviews should be carried out is:

1. The person who has initiated the process, to clarify any details about their complaint or allegations

2. Respondent(s) i.e. the person/s defending/denying the complaint or allegations, and who is asked to respond to communications made by another
3. Any witness(es).

It is acceptable to interview any party more than once during the investigation process. Where new facts come to light during an investigation which warrants further discussion with other parties, further discussions are recommended.

Where formal investigative interviews are required, employees to be interviewed should be informed of the reason for the interview and of their right to be accompanied by a Trade Union representative or workplace colleague.

Where information is obtained through interviews or other discussions, those providing the information:

- Will be asked to sign and date the recorded details as a true record, as soon as possible after the interview and in sufficient time for the information to be made available to the relevant parties before any hearing, where relevant
- Will have the opportunity to record any additional comments, if they so wish
- May choose, at a later stage, to provide an additional written statement or evidence.

Where the interviewee does not agree with the record of the interview, any points of dissent should be recorded and appended to the original record.

There may, in exceptional circumstances, be a case for preserving the anonymity of witnesses but Employment Tribunals have made it clear that, in the interests of natural justice, employees should know the full extent of the evidence against them. Anonymity should only be preserved in cases where there is a threat of intimidation or reprisal. However, there is no absolute guarantee of confidentiality as Courts and tribunals may order disclosure of documents, irrespective of whether or not they are confidential. In cases where the Investigating Officer feels that anonymity may be appropriate, they must seek advice from the HR Advisor dealing with the case.

#### **4.1 Interviewing Tips**

Investigating Officers should ask probing questions to ensure that all details are as specific and accurate as possible. For example, where times are involved: how certain is the witness of the timing? Did they record the matter in writing at the time? Are they certain that it was a specific employee they saw? Is there any other person who could corroborate their evidence or any other facts or documentation which may support their view?

Investigating Officers should exercise care where the witness merely “has the impression or opinion that...”. Investigating Officers should also be wary of hearsay. If the witness seems to be relying on the opinion of a third party, the investigator should seek out the third party as a witness.

Useful open questions to use as part of an investigative interview could be:

- Please take me through these events in your own words giving as much detail as possible
- How did you feel / how did that make you feel?
- Why did you do / say that?
- Were there any witnesses to the occurrence that you are aware of, including anyone who may have heard but not seen what happened?

Leading questions should generally be avoided, e.g. 'did she shout at you?' unless there is no other way of finding an answer to the question.

## **5. Gathering Other Evidence**

Evidence is often available in many forms. For example, in cases of computer abuse, Information Services may be able to provide certain information. Photographic or video / CCTV evidence may also be available. Investigating Officers should refer to the University's Computing Regulations, or the guidance on 'Interception of Communications Legislation' before seeking to obtain this type of evidence.

Where written documents, e.g. emails, are to be relied upon as evidence, it would normally be appropriate to interview the originators of those documents to clarify their context, especially where the content of the document forms part, or all of the basis for an allegation.

In exceptional circumstances, an investigation may also involve obtaining written statements from witnesses or others who are involved, where a formal interview is not possible or considered necessary, although interviews are the preferred method of obtaining information from witnesses. Advice should be sought from the HR Advisor where this is being considered.

The search for evidence need not be confined to University employees. It may be appropriate to speak to students, people external to the University or collaborative partners.

The Investigating Officer will also need to consider other information pertinent to the investigation (e.g. copies of documents, timekeeping records, etc.).

## **6. Seeking Specialist Advice**

An Investigating Officer may need to seek specialist advice or input to an investigation, and this can be done through speaking to relevant specialist colleagues. If this is necessary, it must always be done taking into account the confidentiality of the matter.

A specialist may be interviewed as a witness, even though they may not have been involved in the case directly.

In all cases, any advice or input to the investigation by a specialist must be formally recorded.

## **7. The Investigating Officer's Report**

The Investigating Officer must make a written report on findings based on fact and sound reasoning supported by evidence, and they are usually required to confirm in their report whether their findings lead them to believe that there is a case to answer.

The evidence obtained in support of a case does not have to prove the matter 'beyond all reasonable doubt' as would be the case in criminal hearings. Employment Tribunals will look at whether the employer had reasonable grounds for taking the action they did, based on a reasonable belief after carrying out a reasonable investigation and following a fair procedure.

The report should be drawn up as follows:

- A brief summary of the issue addressed, the methodology in approaching it and the evidence considered
- An account of events in chronological order
- Clarification of what has been established as fact or opinion, and what the Investigating Officer believes to be the case, based on their objective assessment of the evidence, and informed by their knowledge and expertise
- A clear statement as to whether or not they believe there is a case to answer
- The report must be objective
- All witness statements, interview records, and any other evidence should be appended to the report

A template report with further guidance can be found at Annex A to this document. Any additional guidance required on the completion of the report can be obtained from the HR Advisor dealing with the case.

## **8. Changes to the Nature of a Complaint**

There may be some circumstances where, whilst managing an investigation, the Investigating Officer finds that the issue in question should be managed under a different policy to that which they are currently following, for example a Disciplinary Procedure could actually be referred back to be dealt with under the Capability Policy.

In these circumstances, the Investigating Officer should speak with the HR Advisor dealing with the case who will discuss the matter with the manager concerned.

The employee and other parties directly concerned should be given time for reflection and for seeking advice in relation to any change of procedure.

## **9. Guidance History and Review**

This guidance was approved by CJCNC on 30 March 2011 and effect from 1 April 2011.

A full review of this Guidance was carried out, and amended as noted at Section 9.1, and was approved by CJCNC on 27 September 2013

In the event of any significant change to the legal position on managing investigations, relevant statutory requirements or any other related matter this guidance will be subject to immediate review in consultation with the Trade Unions. In the absence of such a change, the guidance will be reviewed by November 2019.

### 9.1 Change control record:

No.	Approval date:	Amendment made:	Approved by:
1.	27 Sep. 2013	<p><b>Full Review:</b> This Guidance was reviewed which resulted in:</p> <p><b>Section 2:</b> The inclusion of a statement on referral to the University Complaints Handling Procedure for complaints raised by a student or member of the public.</p> <p><b>Section 3:</b> Clarification on the presence of note takers during investigation interviews.</p> <p><b>Section 4:</b> Clarification of the term 'Respondent' and clarification on the disclosure of documents should a case go to an Employment Tribunal.</p> <p><b>Section 7 and Annex A:</b> The inclusion of guidance and a Suggested Template Investigators Report.</p>	CJCNC.

## **Suggested Template Investigators Report**

### **1. Background**

Explain here the reason for the report. This should include:

- a) A brief (one paragraph) summary of the issue you have been asked to investigate, including the relevant policy e.g. discipline or grievance, and the specific allegations made
- b) Confirm the name and role of the person who has asked you to take forward this investigation
- c) Confirm the names of those people involved in the case

### **2. Approach to Investigation**

Explain here the process you have followed in managing this investigation. This should include the names and roles of the witnesses you have interviewed (including the name of any representative they were accompanied by), or attempted to interview. You should also confirm details of any other evidence you sought and gathered during the investigation, including written witness statements, official documents, emails, and specialist advice etc.

You should also explain in this section any reasons for deciding not to interview anyone who is directly linked to the investigation or had some involvement in the matter, as well as those people who refused to be interviewed, if relevant, specifying any reasons given.

List here the documents you have used as evidence obtained during the investigation (evidence should be appended to the report). This should be the signed statements, notes of interviews, and any other documentation referred to. (You will not need to comment here on the information held within these documents).

### **3. Findings**

In this section, you should set out an account of the events in relation to the case, in chronological order, based on your findings from the investigation. You should clarify what has been established as fact or opinion, based on your objective assessment of the evidence, and also note where certain events are disputed by any of the parties involved. It is wise to refer to

appendices when talking about evidence gathered, rather than repeating sections of statements.

In this section, you should explain whether or not you believe that there were sufficient grounds for the complaint, and also whether you believe that the complaint or allegations should be upheld.

It is important to note that Investigating Officers do not have to prove a matter 'beyond all reasonable doubt' as would be the case in criminal hearings. They will however need to form a reasonable belief that the complaint or allegations should be upheld, and should comment on how they have reached this belief.

#### **4. Recommendations**

In this section, you should explain what your recommendations are based on the judgement you have made about the case.

In disciplinary investigations, recommendations may include: no further action; informal action; mediation; or proceeding to a disciplinary hearing.

In grievances and complaints, you may recommend that the matter is dealt with informally through workplace mediation, or that the matter is taken forward as a disciplinary case with the employee against whom the complaint was made.