GUIDELINES FOR INVESTIGATING OFFICERS

(HRG 20)
Guidance HRG20

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1. **INTRODUCTION**

From time to time it is necessary to investigate certain matters involving staff and you may be nominated as the Investigating Officer. These matters may range from disciplinary allegations, grievance submissions, bullying, sex or racial harassment allegations, whistle blowing/disclosure, to any other matter where there is a need to establish the facts or ascertain whether there is a concern and there is a case to be answered at a hearing.

Properly conducted investigations result in better decisions, greater fairness and consistency in the way in which employees are treated in line with the natural course of justice. This in turn minimises the number of appeals and further action to tribunals or courts. It is essential that investigations are completed before a hearing is convened.

If you are asked to investigate a matter, seek advice from senior Human Resources staff and read the following guidelines carefully. You should declare at that time if you feel it is inappropriate for you to undertake the investigation because it proposes a conflict of interest, if for example, the matter involves a close friend or if you have had previous personal relationship difficulties towards any individual involved in the investigation.

Investigations should be concluded within a 12 week period. If, for a specific reason, you are unable to meet this timeframe, you must inform your HR support immediately.

If the investigation relates to suspended employee[s], understandably, speed is of the essence. An investigation must take priority over all other work issues due to the timescales/Key Performance Indicators (KPI’s) that must be adhered to. It is essential for an Investigating Officer to be supported by their Manager. You should discuss prioritisation of your workload with your Line Manager as soon as you have been appointed as an Investigating Officer.

If an employee has admitted committing a disciplinary offence there is no requirement for a lengthy investigation as management’s case is proven by the employee’s own admission. It is important however, to still conduct an investigation in order to ascertain contributory factors and additional key information which will add to the case. In these instances, the statement from the employee - including their admission - together with any supporting documentation e.g. clinical notes, timesheets etc will be sufficient without needing to interview witnesses.

These guidelines are best read after reading and understanding the relevant Trust HR policies pertinent to the allegations you are investigating [e.g. Standards of Conduct and Disciplinary (HRP1), Handling Individual and Collective Grievances (HRP2), Disclosure (HRP 12) etc].

2. **CONFIDENTIALITY**

Confidentiality during an investigation is of the utmost importance in order to maintain the integrity of the evidence and the respect of the individuals being investigated. It is often the case at the beginning of an investigation that rumours start circulating between various witnesses, colleagues and even members of the public and patients/clients. It is important that the Investigating Officer does not impart more knowledge about the allegations or the investigation than is absolutely essential. It is also important to impress upon all parties involved in the process of the need to maintain confidentiality, and that it is a disciplinary offence in itself to breach that confidentiality.

3. **PRIOR TO STARTING AN INVESTIGATION**

3.1 Be clear about what is expected of your role!

It is usual for the Investigating Officer to undertake a thorough investigation into the facts, prepare a report on the findings and attend any hearing to present the management case to the panel. In disciplinary investigations, the objective for the organisation is to establish whether there is a case to
answer that needs to be heard at a hearing. Investigating Officers will not sit on a disciplinary panel. In other circumstances you may be asked to investigate only a particular element of a complaint or a grievance. If you are not completely sure of your remit you should seek advice from the Head of Service who has allocated you the case and/or your allocated HR support.

3.2 Plan the Investigation

- Make sure you have the capacity to conduct an investigation and if not speak to your Line Manager or the person who appointed you to investigate the case.
- Meet up with HR support as soon as possible to pre-plan investigation bringing all investigation documentation and diary with you to the meeting to facilitate early discussions.
- Compile [with advice from your HR support] the carefully worded and appropriate allegations
- You will be required to include a timeline of events/chronological summary in your Management Report appendices. You are recommended to begin this as soon as you begin your investigation and continue to update it throughout the course of the investigation. Your HR support can provide you with a template document.
- Identify who will be your administrative support – to issue letters and transcribe interviews – this is the responsibility of the Investigating Officer and not HR.
- Obtain statements and/or interview all individuals as soon as possible before memories fade.
- Clarify the allegations or complaint. Usually when investigating a grievance the first person you should interview is the complainant. In a disciplinary usually the first person to be interviewed would be the subject of the allegations unless further information is needed from witnesses prior to liaising with the individual.
- Decide what facts need to be established and continually review.
- Decide which witnesses need to be interviewed and in which order. Remember that if there are a large number of witnesses and they are all likely to have witnessed the same incident there is little point in interviewing a number of individuals who will all tell you the same thing.
- Timetable the interviews to correspond with the projected date for conclusion of investigation – don’t forget to take the writing of the report into consideration as this can often take the most time.
- Decide what documentary evidence is needed - this may include e.g. employment records, payroll records, payslips, Bank statements, rotas, timesheets, travel claims, patient records, diaries, training records, policies/procedures etc. Remember, if the investigation relates to an overpayment for example, you may wish to include copies of Staff Bulletins, email footers and any other documentation that reminds the individual of their responsibility to check their payslip, travel claim, bank statement etc.
- Check that you are complying with the requirements of the relevant Trust policy.
- Remember not to get lost in the detail of the investigation. Often witnesses will give lots of information which can detract from the issue at hand. Remember to continually bring your focus back to the allegations and ask yourself “what is the crux of the issue?”
- Identify/confirm who will be your administrative support – transcriptions, issuing letters etc. This is responsibility of Investigating Officer, not HR.

3.3 Familiarise Yourself with Relevant Policies and Procedures

It is important you recognise that in carrying out the investigation, you are acting for the Trust in discharging its right and duty to manage itself, and that the European Convention, via the Human Rights Act 1998, gives to individuals rights which must be respected. It is important that the rights of employees being investigated and employees who have made a complaint or engaged the Grievance/Dignity at Work/Disclosure procedures are protected. Your allocated HR support is there to assist should you find a conflict or potential conflict.

You must do all in your power to ensure that should the matter become the subject of outside scrutiny by an Employment Tribunal [ET], the processes used and the investigation undertaken, are transparent and have been driven by an honest search for the truth. You need to be aware that most cases fail at ET on procedural grounds, usually due to an organisation not following its own documented policies and procedures.
Your investigation may fall within the scope of one or more of the following areas:

- Disciplinary
- Grievance
- Dignity At Work [bullying/harassment]
- Disclosure
- Financial irregularities (all such investigations will initially be co-ordinated by the local counter fraud specialist prior to being handed over for internal investigation.)

Relevant documents/policies are available on the Trust's internet website.

Your investigation should be open and never covert. There are special statutory rules regarding covert investigations and the Trust's Fraud Specialist, in conjunction with the Directors of Finance and HR, are the only persons who can recommend such action to the Chief Executive.

4. **STARTING THE INVESTIGATION**

Seek the advice of your nominated HR support before starting an investigation. The investigation should be commenced promptly and be completed as soon as reasonably possible; there is a requirement to complete investigations within a timescale of twelve weeks. The employee who is the subject of a complaint or allegations must be informed by their Line Manager and advised of the subject matter. As part of your role when you meet with the individual you should include an approximate indication as to how long the investigation is likely to take. They should receive a letter from the Line Manager to summarise those discussions. You can then progress the case by issuing a letter to the individual to introduce yourself as the Investigating Officer and inviting them to meet with you. The employee must be advised they have the right of representation by a trade union representative or a workplace colleague during any formal meetings they have with you as the Investigating Officer.

Ascertain whether the employee under investigation falls within the following categories:
- Is pregnant
- Has blown the whistle
- Has complained about health & safety matters
- Is a member of an ethnic minority (an Equal Opportunities monitoring form should be completed) – When? Issued by whom?
- Has a recognised long term health condition or disability covered under the Equality Act (DDA)
- Is an official trade union representative/steward

as they may have additional employment protection rights and other procedures may apply. If the answer is yes to any of these, please inform your HR support.

You must inform the Fraud Specialist/ Director of Finance/Director of HR immediately if during your investigation you become aware of any financial loss (e.g. theft, fraudulent travel claims, staff being paid for hours not worked etc).

5. **DURING THE INVESTIGATION**

Arrange to interview the parties involved promptly to ensure the recollection of events is not dulled by the passage of time. (See section below on interviewing witnesses.)

Obtain all relevant information including witness statements and other documents (see Interviewing Witnesses ? and Recording Interviews ? below). Ensure that confidentiality is respected wherever appropriate.

There is a duty upon every employee to co-operate with management when required by giving written evidence and/or appearing as a witness. Witnesses will be released from their duties to attend investigation interviews and disciplinary/grievance hearings.

The objective is to complete the investigation within an agreed period. However, if the investigation
is delayed or protracted for any reason, it is the responsibility of the Investigating Officer to advise the parties, their representatives and the HR Department of this and provide a projected timescale for resumption and completion of the investigation. This should be confirmed formally via letter to all parties to demonstrate effective communication has been maintained throughout the case.

6. **WITNESSES**

Where there is significant disagreement as to the facts of the matter under investigation, the Investigating Officer might feel it is beneficial for any other person known to have direct knowledge of the disputed facts to attend the disciplinary hearing to answer relevant questions concerning their knowledge of the facts in dispute. Where there are a large number of potential witnesses then the Investigating Officer, with assistance from your HR support, should select a small number of witnesses to be approached. It is important that calling witnesses to attend a hearing is only used where it is felt their presence and responses to questions would add genuine value to a case, otherwise the witness interview transcripts should suffice.

7. **INTERVIEWING**

When considering whether to interview potential witnesses it is wise to focus on the allegations and to ask whether interviewing a particular individual would add weight to the investigation process. If you feel you can gain enough information from interviewing fewer witnesses then trust your judgement so that you don’t get more detail than you need to demonstrate whether there is a case to answer or not.

Ensure that all employees who are to be interviewed are advised of the nature of the enquiry and their right to be accompanied by a work based colleague of their choice. This does not include being represented by a Trade Union Representative.

Witnesses should be informed at the beginning of the interview that their statement may be used at a future hearing and that it is possible they may be called as a witness, for which they would be given appropriate support.

You should always remember to:

- Plan the interview in advance
- Be courteous, no matter how serious the allegations are
- Make sure that there are no interruptions and that telephones are diverted - create the right environment
- Do not lead the witness – let them tell you what happened in their own words
- Do not allow the interview to develop into a disciplinary hearing at which a verdict is reached and recommendations made regarding any further action.
- Keep the interview brief and to the point. Interviews should take a maximum of 1.5 hours.

7.1 **Interview Technique 1: Free Recall**

This technique is useful – in order to help build trust and reveal the true facts. Ask open questions to obtain the truth, information and evidence. Probe using *Why? When? What? Who? Where? How?*

- Encourage the interviewee to ask questions
- Explain what is required
- Ask interviewee to speak slowly
- Use a relaxed approach
- Enable the individual to recall freely from memory
- Ask interviewee to concentrate
- Allow them to do the talking
- Listen carefully
- Make notes of dates, times and facts, *briefly at first* - this builds trust
- Encourage them to be clear about dates & times etc.
- If they become upset, allow the opportunity for a break
If necessary postpone the interview and reconvene when the interviewee is more composed.

7.2 Interview Technique 2: Conversation Management

This is useful to help elicit more detailed information.

- Prepare general questions and specific detailed questions in advance
- Ask open questions to establish detail
- Then ask specific questions in relation to what has already been said
- Review information collected
- Reiterate what you have been told in order to clarify or confirm/check you have understood correctly.
- Check your comprehension

RECORDING INTERVIEWS

Any interviews you have as Investigating Officer should be recorded using a tape machine which is later transcribed. The staff member should always be asked at the beginning of their interview whether they consent to the tape machine being used. It is important therefore that before you commence the investigation you arrange to either utilise equipment from within your own service/the service the investigation stems from, or you arrange to book a set through your HR support.

If the staff member refuses the use of the machine, or in the event the tape machine malfunctions, a summary of the meeting will be written in note form by the HR support.

Administrative support should be provided or, in cases where confidentiality makes this inappropriate, be funded by the Directorate/Department where the investigation stems from to transcribe recorded interviews.

On occasions it may be foreseen that a staff member (or their Trade Union Representative) will refuse the use of the tape machine during their interview. These instances should be highlighted to you by your HR support so that alternative arrangements can be made. As a last resort the HR support will be able to summarise the meeting in note form however it should be stressed to all parties that any notes made will not be verbatim. As investigating officer it is therefore prudent to bear this in mind and alternative admin support made available to take short-hand notes to be later typed, if this is felt to be necessary.

You should make sure you review the transcript for accuracy once it has been compiled by your administrative support prior to distribution to the employees who have been interviewed. Remember when distributing transcripts to include any Trade Union Representatives in your circulation but not to issue copies to work based colleagues.

8. PREPARING THE INVESTIGATION REPORT

After all the evidence has been collected, you should write a brief report setting out the facts as told to you by the interviewees, in chronological order. A template can be provided by your HR support. It is advisable where there are contradictions, to highlight these since they may need to be probed during a hearing.

The report may include the following content using the template provided by HR:

- Employment history of the employee where this is relevant to the case
- Details of the allegations and alleged breach of disciplinary rule or details of complaint(s) in Grievance/Dignity at Work cases
- Summary of the evidence found
- Details of any conflicting evidence
- Other relevant documents, i.e. written instructions or training records, policies/procedures, guidance notes
- Any other relevant material - this might include personal details of the individual concerned and any suggestions, for example, of animosity between those involved (which might explain
inconsistencies)

- brief conclusion

Additionally in some circumstances, it may be appropriate to compile recommendations relating to organisational learning or learning and/or a proposed development plan for the individual as a separate appendix which would not form part of the report. Your HR support should be able to advise you as to whether this is appropriate or not for the case you are investigating.

The report MUST:

- Be written in 3rd person
- Relate as far as possible only to the matter of complaint/grievance/allegations
- Be objective and non-judgemental
- Maintain the anonymity of patients and/or members of the public, if appropriate – this is also applicable for the pack of supporting evidence, so names/dates of birth, addresses etc should be blanked out.
- In the case of a disciplinary, do not include any previous disciplinary action or warnings which are ‘out of time’ and therefore no longer active (See Standards of Conduct and Disciplinary Policy).
- Be prepared to reveal any management shortcomings, which can sometimes be brought to light during the investigation, although they should ordinarily be detailed separately in the appendix as outlined above. This would only be made available to those deciding whether there is a case to answer, and later to any panel hearing the case.
- Give an indication of the type of misconduct involved [i.e. serious/gross/professional etc] but do not include a recommendation as to what disciplinary action is warranted or your opinion in relation to whether you think there is a case to answer.

Keep your HR Support informed and updated; send them drafts of your report to demonstrate your progress, feedback or suggestions may be provided for your consideration.

Remember the employee and union representative are entitled to receive a copy of your report in all cases other than contentious Grievance or Dignity at Work investigations where it is more appropriate to issue a summary letter. In these instances you will be advised of this by your HR support.

After Completion of the Report:

Provide a final draft to your HR Support who will check whether it is ready to be submitted to the Panel. When you have received confirmation, either you or your HR Support will email the report to the relevant HR Business Partner. They will then meet with the Panel Chair (usually the relevant Head of Service) and decide what action, if any, is taken. If further action is necessary - for example, a disciplinary hearing, they should advise you as soon as possible of a date for the hearing.

After your completed report has been submitted to the individuals making a decision, a paper copy of your report and a covering letter should be issued to the individual subject to the complaint/allegations (if appropriate) and their representative. There is no need to furnish them with appendices at this stage of the process.

Sometimes it is decided that no further action should take place and your role as Investigating Officer will therefore cease. However, if the case continues to a disciplinary hearing, your report could be used as the whole of, or part of, the Management Statement of Case.

It should be noted at this point that in instances where the contents of a Grievance or Dignity at Work complaint is upheld (either in part or in full), the case then may ‘flip’ across to a disciplinary investigation/hearing if appropriate. In these instances you may be asked to adjust the contents of your grievance report to reflect the new circumstances. This is because the evidence you are using will largely be the same, but the new focus and detail of the allegations will need to be made explicit.

Where there is significant disagreement as to the facts of the matter under investigation, the Investigating Officer might feel it is beneficial for any other person known to have direct knowledge of
the disputed facts to attend the disciplinary hearing to answer relevant questions concerning their knowledge of the facts in dispute. Where there are a large number of potential witnesses then the Investigating Officer, with assistance from your HR support, should select a small number of witnesses to be approached. It is important that calling witnesses to attend a hearing is only used where it is felt their presence and responses to questions would add genuine value to a case, otherwise the witness interview transcripts should suffice.

9. THE MANAGEMENT STATEMENT OF CASE

The following format is suggested in compiling a Management Statement of Case:

- Name of department and directorate
- Investigating Officer’s name and job title
- Employee’s name, job title, band, base and brief outline of employment history
- Allegations
- Background to current case/incident
- Brief outline of investigation and collection of evidence
- Findings/conclusion
- List of appendices (if relevant)

Again, a template can be provided to you from your HR support.

10. IN PREPARATION FOR A DISCIPLINARY HEARING YOU SHOULD:

- Arrange for any witnesses you interviewed as part of the investigation to attend, if appropriate and brief such witnesses as to what to expect at the hearing (the HR Department can assist with this.) You should consult with your HR support when considering whether any/some witnesses should be called for advice in this regard.
- Prepare to present the management case – present key points of your investigation, explain any conflicting evidence and sum up the investigation by making a closing statement.
- Prepare a summary of the main facts of the investigation for your summing up, but be prepared to add any relevant facts from the evidence heard at the hearing.
- Prepare any questions you would like to ask the staff member/representative at the hearing based on the case they have submitted to you, as well as any anticipated response you would like to draw to the attention of the panel.
- Be prepared for any potential questions you may be asked as the Investigating Officer by the staff member/their representative or the panel and ensure you are confident in your knowledge of the case you are presenting.

11. DISCIPLINARY HEARING

It is the responsibility of the Investigating Officer to:

a) Allow sufficient time, prior to the hearing, to send staff side and the disciplinary panel the management case plus all necessary attachments

The chair of the disciplinary panel, with guidance from the HR Business Partner supporting them on the panel, will:

a) Write the letter instructing the employee to attend a disciplinary hearing
b) Make and confirm all arrangements [including hospitality]

You will be copied into the letter to the employee advising them of the date of the hearing. On receipt you should forward a copy of your full management pack including appendices to the individual and their representative

At the hearing the Investigating Officer will:

i) Present the Management Statement of Case: outline the allegations and present the evidence to the hearing including calling any witnesses who may substantiate the allegations
ii) Ask questions of the individual concerned or his/her witnesses

iii) Answer questions placed by the individual or their representative and the disciplinary panel

iv) ‘Sum up’ the case. If new evidence is put forward which has not been covered previously comment on its relevance. You may wish to adjourn to quickly prepare this element and therefore the panel will ask both management and staff sides if they wish to take this opportunity.

Note: The procedure to be used at hearing is documented within the Trust’s Standards of Conduct & Disciplinary Policy HRP1. It is the responsibility of the Chair of the Disciplinary Panel to ensure that the hearing is conducted appropriately.

12. DISCIPLINARY APPEAL HEARINGS

Following a disciplinary hearing, an employee may appeal against any disciplinary action taken against him/her in line with Trust policy. The Chair of the original Disciplinary Hearing would normally present management’s case at an appeal hearing, supported by their HR support from the original panel. However, as Investigating Officer, you may be required to present the evidence and/or be called as a witness to the appeal panel.

13. EMPLOYMENT TRIBUNALS

If an employee is dismissed following your investigation and subsequent disciplinary hearing or remains aggrieved following exhaustion of the formal disciplinary/grievance/dignity at work processes, the employee has the right to complain to an Employment Tribunal [ET]. As Investigating Officer, you may be required to attend as a witness to give evidence at the tribunal.

An organisation’s procedures are scrutinised thoroughly at an ET. In cases of contested misconduct an employer has to pass the 3-stage test of ‘reasonableness’ – they must demonstrate that they acted reasonably in dismissing the employee, and:

- There was a genuine belief in the employee’s ‘guilt’
- There were reasonable grounds to sustain that belief
- The employer carried out as much investigation as was reasonable under all the circumstances

i.e. in the application of all disciplinary sanctions, the level of proof required was “on the balance of probabilities”, which is a lesser burden of proof when compared to criminal cases. It is the responsibility of the management side to prove the allegations, rather than the employee being required to prove that they were "innocent".

*If you have any queries on procedural aspects of Employment Tribunals, please contact your HR support.*