Keele University

Management Practice Guide - Investigation Guidelines

Human Resources Department

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Introduction

This is a practical guide for managers responsible for conducting investigations (‘Investigating Officers’). Managers are strongly encouraged to obtain support and guidance from their link Human Resources team (HR Investigation Support) in relation to individual cases.

Whilst the guide is primarily focused on dealing with allegations of misconduct under the University’s Disciplinary and Appeals Procedures, the guidelines can also be used for investigations under other University procedures (for example, Grievances, Bullying and Harassment) and adapted for use where appropriate to meet the needs of the circumstances.

This guidance is intended to ensure consistent, fair, and impartial treatment for all parties.

Why are Investigations Important?

Investigations are conducted to gather information in relation to an allegation or issue.

Employers are required to demonstrate how and why they reached a particular decision, or recommended course of actions and whether or not they acted reasonably in accordance with the relevant internal policy or procedure.

A thorough investigation, carried out fairly and consistently, will demonstrate that the Employer has acted reasonably and in line with the relevant University policy or procedure.

The Essential Elements of a Fair and Thorough Investigation

a) It is important to conduct investigations thoroughly and within a reasonable timescale.

b) Investigations must be conducted in an impartial and non-judgmental manner.

c) The primary objective of an investigation is to establish the facts i.e what has happened and the full circumstances of the case.

e) In the course of the investigation, confidentiality must be maintained as far as is consistent with the matters being investigated.

f) The Investigating Officer will not be involved in hearing or determining the case if it proceeds to a formal disciplinary/grievance, etc interview but will normally attend to present management’s case.

Conducting Investigations– The Basics

In most cases the immediate line manager/supervisor will undertake the investigation. In circumstances where the line manager is materially involved in the matter under investigation, an alternative manager who could be from within, or outside of, the management line will be appointed to undertake the investigation. Alternative Investigating Officers will normally be from within the same School/Faculty/Directorate.

Individuals who are the subject of an investigation may be accompanied by a colleague or Trade Union official at any investigatory meetings.

You will receive support and assistance from HR in preparing and conducting the investigation. He/she may also assist you to ask questions in interviews. The HR Support will also ensure that notes are taken of any interviews and if necessary will appoint someone to undertake this task.

Investigation interviews should be conducted as promptly as possible before memories fade. There may also be a need to re-interview witnesses during the investigation process. Additional witnesses are likely to be identified during the investigation and should also be interviewed, where appropriate.

The individual(s) against whom an allegation has been made must be advised of the allegation before the investigation is commenced.

All witnesses must be advised of a suitable interview date and be given reasonable notice. The witness should be advised that the purpose of the interview will be to discuss in detail their account of a particular issue.

Investigation Process

Preparing for Investigation Interviews

At the outset of the investigation you should, with your HR Support, identify:

a) details of the precise issue to be investigated, e.g. details of allegations made, etc;

b) evidence to be collected, (where evidence is likely to perish or be removed it must be gathered promptly). There are three main types of evidence (see box below). Note that where a criminal offence may have been committed, the evidence gathered for the disciplinary investigation may also be required for a criminal investigation and there may be a legal requirement to inform other agencies (e.g. Police, Health and Safety Executive, Disclosure and Barring service, Social Services). Your HR Investigation Support will guide you in these circumstances.

c) under which University policy or procedure the investigation is being held;

d) for what purpose and by whom will any subsequent investigation report be used.

Evidence

a) Records – e.g. records of discussions outlining and reinforcing expected standards, records of training provided, records of timekeeping, attendance, etc, copies of University policies that have been breached, computer records etc

b) Management Statements – e.g. statements relating to specific, observed incidents, statements relating to level of performance and how this is below the required standard, statement of the consequences/effect of the alleged behaviour/conduct, statements of discussions that have taken place with the individual or others relating to the allegation, etc.

c) Witness Statements

You must plan to interview any person identified who may be able to provide information relevant to the investigation (witnesses) including the person against whom the allegations have been made. There are five main categories of witnesses (see box below).

Witnesses

a) Witnesses (including the person against whom the allegations have been made) who were directly involved in the alleged incident;

b) Witnesses who were present at/observed the alleged incident but were not directly involved (e.g. other members of staff within a unit);

c) "Professional witnesses", i.e. individuals with specialist knowledge of a particular area/field. Such witnesses may be required in cases where the issues are of a technical nature and where you do not have expertise in that area;

d) Relevant line managers;

e) Any other person who is identified to have information relevant to the investigation.

In preparation for any investigation interview(s) you should:

a) ensure that a suitable private room is available to hold the interview confidentially and without interruptions;

b) ensure that all necessary information is available during the course of the interview, e.g. copies of policies / procedures etc.;

c) identify precisely what needs to be established from each interviewee. Depending on the circumstances of the case you may be able to prepare a list or structure of questions in relation to the alleged incident / allegation however it is important to remain flexible in order that the answers given can be fully explored;

Managers should refer to Annex A for guidance on a standard structure for an investigation interview.

Notes / witness statements

Notes taken during an investigation interview with a witness should be typed, checked and signed by the witness. The notes should record the facts, written (within reason) in the language used by the witness following the train of events. Any ambiguity or gap in the account should be clarified with the witness. The witness must be given the opportunity to review the notes and asked to sign them to confirm it as a true and accurate version of events.

You may, in addition to an investigatory interview, wish to request witnesses to provide a written statement describing the alleged incident and any relevant background information in his/her own words.

Where the individual disagrees with the notes of the interview, you should record the details of any disagreement and store this with the note-taker's version of the notes. Where the changes are not agreed the notes will not be changed. Refusal to sign the notes/statement should also be recorded.

Preparing an Investigation Report

On conclusion of the investigation, you will (with assistance from your HR Support) produce a written report. The report will summarise the issues investigated, what you have found and include relevant documentation and written statements gathered in the course of the investigation. The report should normally be submitted to the next manager in the line who will, with assistance from HR, decide whether there is a case to answer and whether a disciplinary hearing should be convened.

Annex B gives some guidance on the suggested structure of the Investigation Report.

Annex A – Structure of the Investigation Interview

Introduction

Explain the context of the interview, for what purpose the interview notes and subsequent statement will be used, how and when he or she will be able to check the notes / statements and the importance of confidentiality (witnesses should be advised that they should not discuss any details of the case outside of the investigation interview). Explain to interviewees that the investigation interview is not a formal hearing but inform witnesses that if the case results in a formal hearing, they may be required to attend to give evidence.

Questioning

This involves a technique of using open questions (who, what, why, when, how, etc.) with closed questions being used to clarify points. Leading questions should always be avoided. When meeting with the member of staff against whom the allegation has been made, it is useful to ask whether they admit the misconduct. Where misconduct is admitted, the scope of the investigation will typically be reduced, to consideration of the full circumstances including any mitigation.

Discuss and enquire into any additional information / evidence presented whilst always returning to the prepared list / structure of questions.

Ensure specific examples are provided.

All questions should aim to encourage interviewees to recall their version of events in their own words.

When meeting with the member of staff against whom the allegations have been made, it may be useful to ask him/her to identify possible witnesses, questions or issues to be raised with witnesses and to provide any documentation relevant to the issues being investigated. Consideration should then be given to whether these suggestions should be pursued.

Information Gathering

At the end of the investigation interview you should have obtained from each witness:

- the names of those present or involved; date / time / place of the alleged incident / allegation;
- details of what took place, and the order in which they happened;
- response(s) to any other documents or witness evidence which is inconsistent with their account;
- the steps taken since the alleged incident / allegation, including any steps taken to resolve;
- where the investigation relates to a complaint/grievance, a preferred resolution should also be explored.

Summarising

Once questioning is complete, re-cap and clarify main points of discussion and answer any appropriate questions or concerns raised.

Closing Statement

Explain the next steps: the individual will be issued with a copy of their statement and will have the opportunity to review to suggest amendments. They will be asked to sign the statement. Explain when the investigation is expected to be completed. Ensure that your contact details are provided, and ensure that the member of staff understands that he or she needs to maintain confidentiality.

Annex B: Investigation Report Structure

Introduction

State who is under investigation. Include details of the individual's job title, length of service and any other relevant contextual information, e.g. grade or 'has line management responsibility for 6 staff'.

Summary of Allegation(s)

Set out the allegations under investigation clearly and specifically, e.g.

a) "Alleged that during the period 1st April 2008 to 30th July 2008, you attended late for work on 16 separate occasions".

b) "Alleged that you were absent from work without permission or proper authority on 4th, 5th and 6th July 2008".

c) "Alleged that on 19th August 2008 you attended for work under the influence of alcohol – conduct liable to (i) compromise the health and safety of yourself and others, (ii) compromise the reliability and integrity of the research in which you are involved and (iii) harm the reputation of the University".

d) "Alleged that on 4th July 2008, you were verbally abusive/used explicit foul language to your manager, Mrs Smith".

Suspension (where appropriate)

Specify summary details, e.g. "Mr X was suspended pending a full investigation in to the alleged incident on DATE by NAME. The letter confirming the suspension is attached at Annex A".

Details of Allegation(s)

Include details of what specifically is alleged to have happened or what specifically are the management concerns.

Where you have first hand knowledge of the incident you can summarise what you saw or how you became aware of the incident, e.g. what was reported to you.

OR

Extract a summary of the incident from the main witness statements, being clear to preface everything with "Mr X states that …" and making a reference to the originating supporting document, e.g. "which can be found in Annex A".

OR

Where there is a single statement which constitutes an easily digestible account of what is alleged to have happened this can be referred to here.

OR

Refer to a key information schedule in the Annexes, e.g. summary document showing the dates on which the member of staff was late for work, how late they were and the reason given.

Account / Response Offered by the Member of Staff Under Investigation

Explain the context, e.g. when the individual was interviewed and who was present. Summarise the member of staff's account and refer to the notes of the interview/witness statement in the Annex.

The Investigation

State who provided written statements and also who was interviewed as part of the investigation and reference the originating documents in the Annex.

Summarise what information/evidence you have which supports or corroborates the allegation and reference any statements which contradict the allegation.

Previous Management / Context

Depending on the circumstances of the case it may be necessary to give some background information in relation to previous informal management review and to summarise how expectations/standards have been set, explained and reinforced and details of any training, support, etc that has been provided to the individual. Reference should also be made in this section to any 'live' warnings (in relation to the relevant University procedure) on the individual's file.

Reason for Referral to a formal Interview

This section should be a very brief summary of your rationale for determining a genuine belief that there is a prima facie case to answer, i.e. seriousness, background, key support for the account provided by the member of staff under investigation.

As Investigating Officer you are <u>not</u> responsible for recommending any form of sanction. If appropriate, this will be determined by the Chair of the formal interview.

Annexes

Include relevant witness statements / notes from interviews, copies of correspondence, or policies cited during the report.

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