Conducting Formal Investigations
Guidance Notes for Managers (see footnote¹)

1. Purpose

1.1 Many investigations will simply comprise collating and reviewing documentary evidence and may not be formal, as described in the terms below. Such informal or basic investigations will not necessarily require the rigour of the process set out below. Notwithstanding this, informal or basic investigations will still need to take account of the key stages of investigation as outlined in the Flow Chart attached to this document. This will ensure fairness and objectivity.

It is for the Head of Department/Section in conjunction with the link HR Manager/Officer to determine the level of investigation required depending upon the matters under consideration. Normally if formal action (of whatever sort) is a possibility as an outcome of investigation, then it is likely that a formal investigation will be required. It should be noted that an initial informal investigation may on occasion be required in order to decide the scope of any formal investigation.

In some circumstances such as those relating to financial matters or issues of discrimination it may be appropriate to conduct an independent investigation. Such an investigation will only be established with the specific approval of the Director of Human Resources who will consult the Registrar and Secretary before commissioning an independent person or organisation to conduct such an investigation.

1.2 The University’s Conducting Formal Investigations Guidance Notes provides guidance for all Investigating Officers to carry out formal investigations into matters relating to any member of University staff.

1.3 It provides a framework for carrying out any internal formal investigation process, relating to staff, fairly and consistently.

2. When should investigations be used?

2.1 Investigations may be required in the following circumstances:

- allegations of misconduct;
- allegations of bullying/harassment;
- dealing with employee grievances;
- dealing with employee capability issues.

3. Why are investigations important?

3.1 In accordance with a number of University HR policies and procedures, Investigating Officers are required to gather information in relation to a particular allegation or issue. In the case of disciplinary investigations, Investigating Officers will make a recommendation about the most appropriate course of action(s), which in some cases can include proceeding to a formal hearing where the issues will be considered and appropriate sanctions or remedial action may be applied.

¹ Note: Normally these Guidance notes are to be used in connection with HR related investigations such as those in connection with disciplinary, capability and grievance matters.
3.2 In such cases employers are frequently required by Employment Tribunals to demonstrate how and why they reached a particular decision or recommended a course of action, and whether or not they acted reasonably in accordance with the relevant internal policy or procedure.

3.3 A thorough and independent investigation carried out fairly and consistently will provide managers with the necessary facts and evidence on which appropriate decisions can be made.

4. Who should investigate?

4.1 A relevant manager will be appointed to be the Investigating Officer by the Head of Department/Section in consultation with the link HR Manager/Officer. The Investigating Officer would normally be from within the same Section/Department as the Head, but in some circumstances it will be more appropriate for the person appointed to be from another area. The Investigating Officer would normally be supported by a representative from Human Resources during any investigation. The role of the Investigating Officer would be to collect evidence and make a recommendation as to whether there is a case to be heard by a formal panel.

4.2 In order to demonstrate impartiality the Investigating Officer should have had no material prior involvement in the events or allegations under investigation, and should declare any potential conflict of interest that may disqualify him or her from conducting the investigation.

4.3 Before commencing the investigation the Investigating Officer should identify:

- details of the precise issue to be investigated, e.g. details of allegations made, copies of policy being breached;
- suggested methodology for conducting investigations, e.g. identification of initial witnesses;
- for what purpose and by whom any Investigation Report will be used.

5. Conducting investigation interviews

5.1 The Investigating Officer must plan to interview any person identified who may be able to provide information relevant to the investigation. This could include:

- members of staff who witnessed/took part in the alleged incident;
- members of staff within a department;
- relevant line managers;
- any other person who is identified to have information relevant to the investigation.

5.2 Where an individual or individuals are the subject of the investigation they should be notified at the earliest possible stage that an investigation has commenced, and the nature of the allegations/issues. However, this may not always be advisable in certain cases particularly where this may damage any future working relationship.

5.3 Where possible the witnesses should be interviewed in a logical manner, in which ideally the person raising the issue / allegation should be interviewed first and the person whom the allegation is against should be last. Witnesses should normally be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses are likely to be identified during the investigation and must also be interviewed by the Investigating Officer.
5.4 All witnesses must be advised of a suitable meeting date and be given reasonable notice. Although it is not a legal right to allow workplace or Trade Union representation at the investigatory meetings this will be allowed if a member of staff would like such support. The witness should be advised that the purpose of the meeting will be to discuss in detail their account of a particular incident / allegation.

5.5 In preparation for the investigation interviews the Investigating Officer should:

- ensure that a suitable private room is available to hold the interview meeting confidentially and without interruptions;
- ensure that all necessary information is available during the course of the meeting;
- prepare a list or structure of questions in relation to the alleged incident/allegation (if this is appropriate);
- ensure that a nominated person is available to take detailed notes of the meeting, for use within the investigation process/report where appropriate.

5.6 The structure of the investigation interview should normally be as follows:

**Introduction**
- Explain the context of the interview;
- Advise for what purpose the meeting notes and subsequent statement will be used;
- Explain how and when the interviewee will be able to check the notes / statements;
- Stress the importance of confidentiality.

**Questioning**
- Use open questions (who, what, why, when, how etc.) with closed questions being used to clarify points. Leading questions should always be avoided;
- Discuss and enquire into any additional information/evidence presented whilst always returning to the prepared list / structure of questions (if used);
- Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. ‘bullying’ or inappropriate behaviour etc;
- Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answer any appropriate questions or concerns raised.

**Closing Statement**
- Explain the next steps, confirming how/when the witness statement is to be prepared and verified and when the investigation is expected to be completed;
- Ensure the contact details of the Investigating Officer are provided, and ensure confidentiality understood.

5.7 At the end of the investigation interview the Investigating Officer should be able, on the basis of witness interviews, to have a consistent account of the following details:

- 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;
- how the individual reacts 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;
- their preferred outcome (where appropriate).
6. Notes / Witness Statements

6.1 Any notes taken during the investigation interviews should ideally be typed and checked and signed by the witness. This is essential if a written witness statement is not required/prepared. Witnesses should be made aware that the investigatory notes are not verbatim and are instead a record of the discussion. Witnesses should be advised that if they wish to make any amendments to the written notes these should be included in a separate document. In such cases the amendments should be checked by the Investigating Officer, and included in the Investigation Report alongside the notes from the investigation meeting to ensure clarity.

6.2 In some circumstances the Investigating Officer may prepare a witness statement for the witness using the notes from the investigation interview. The witness must be given the opportunity to review the statement and sign to confirm if they accept it to be a true and accurate version of events.

6.3 Where witness statements cannot be prepared by the Investigating Officer, the witness can be asked to provide a written statement which can be prepared with their Trade Union or workplace representative. In these cases the statement should be checked by the Investigation Officer, and included in the Investigation Report alongside the notes from the investigation meeting for points of clarity.

7. Preparing an Investigation Report

7.1 All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report. This may include witness statements, notes from investigation interviews, relevant policies & procedures, evidence of custom and practice etc. This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider. The Investigating Officer should be mindful of document management issues ensuring that original documents are maintained as master file copies, and that information on the source of a document is noted appropriately.

7.2 In evaluating evidence, each case should be judged on its merits; however, the following points should be considered:

- direct witness evidence will usually be stronger than indirect information relating to the incident/allegation;
- evidence which is inconsistent with documents produced at the time is questionable;
- evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable;
- anonymous evidence received should be reviewed with caution as it is often difficult to substantiate;
- consideration should be given to any bias, motivation or influence individual witnesses may have;
- where possible the factual accuracy of points raised in witness statements should be verified by the panel if they are material to the allegations.

Investigation Report Structure

7.4 An Investigation Report should be written by the Investigating Officer and should normally be structured as follows:
Introduction

• A brief introduction to the report clarifying the allegations/incidents which have been investigated, details of the person against whom the allegation has been made, including whether they are currently suspended from duty and the name of the Investigating Officer.

Methodology

• This section should detail the process of the investigation including a list of the people interviewed specifying whether witness statements/notes from meetings have been taken and details of any other activities undertaken as part of the investigation (watching videos etc).

Findings / Analysis

• This will be the largest section of the report and will detail the findings from the investigation, including the facts and evidence presented, any inconsistencies found with explanations where applicable, any mitigating circumstances and any risks identified.
• Where information from particular witnesses is cited, note must be made of the relevant appendices where the notes/witness statements can be found.

Conclusion / Recommendations (where appropriate)

• Where appropriate, a final section would include the conclusions drawn by the Investigating Officer following the evaluation of the evidence. In particular, the Investigating Officer would normally confirm whether or not there was enough evidence for the case to be heard by a formal panel.

Appendices

• All witness statements/notes from meetings, copies of correspondence, or policies cited during the report should be included.

8. Communicating the Outcome

8.1 Once the Investigating Officer has finalised the report the document should be sent to the Head of Department for consideration (with a copy given to the link HR Manager/Officer). Based on the findings of the report, the Head of Department (in conjunction with Human Resources) will decide whether or not any action needs to be taken, acting in accordance with the appropriate University policy.

8.2 It is important to bear in mind that investigation reports may become evidence in any future legal proceedings. When informing parties of the outcome, the intention is to be as open as possible and to ensure that the complainant knows that their complaint was taken seriously and that appropriate action will be taken where necessary. However, the nature of some cases will mean that the report and any witness statements may be likely to contain sensitive personal information and disclosure might therefore need to be restricted in order to preserve confidentiality particularly in cases of harassment and bullying.

9. Dealing with Difficult Issues

9.1 Inevitably during the investigation process unexpected events occur, which fall outside of the terms of the investigation. These may be dealt with as follows:

9.2 Further or counter allegations: If the allegations relate directly to the current investigation or substantiate other information the Investigating Officer must make the decision about whether to include these in the current investigation. If the allegations do not
relate, or are made against other parties, these should be dealt with separately from the investigation.

9.3 **Confidentiality**: The Investigating Officer must ensure that all witnesses and those interviewed understand how the information they provide will be used. If a witness asks if what they disclose can remain confidential, the Investigating Officer should explain that if it is important and relevant to the investigation, it will be included in the report; however, appropriate confidentiality will be maintained. If there are issues relating to the level of confidentiality required by a witness, then the Investigating Officer will agree an appropriate way forward on this with the witness- where possible. It is important also that witnesses understand that there may be a need for them to attend a formal hearing.

9.4 **Refusal to Participate**: If the employee against whom an allegation has been made refuses to participate they should be informed that, unless they provide information, either in person during an investigation meeting, or in writing in relation to the allegations, a decision may be made based on the information provided to the Investigating Officer. It is essential that this be communicated verbally (where possible) or in writing, giving the employee time to reflect and respond appropriately. It is important to offer support to all parties involved, and keep them informed, throughout the process.

9.5 **Refusal to Participate (witness)**: If a witness refuses to participate it is important that where possible the Investigating Officer meets with the witness to find out the reasons behind why they do not wish to participate, to discuss the process which will be followed and provide reassurances of the support which will be available to them. Dependent on the case in question, it may be possible to continue the investigation even if the witness refuses to make a formal statement.

9.6 **Dealing with a member of staff who is absent during an investigation**: If a member of staff is unable to attend an investigation due to sickness it does not mean that the investigation should be unreasonably delayed. Where a member of staff is absent for a short period of time, the Investigating Officer should arrange an alternative date for when the member of staff will be back at work and the investigation should proceed as normal. During a longer period of sickness absence, the member of staff may still be interviewed if it is reasonable to do so. If it has proved impossible to interview the member of staff who is on sick leave, the Investigating Officer should close the investigation and make recommendations without the input of the member of staff.

10. **Associated Documents**

10.1 Associated documents may include:

- Disciplinary Procedure
- Grievance Procedure
- Capability/Performance Procedure
- Ordinance 41

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Tips for Investigating Officers

Preparation checklist

• Prepare questions (if appropriate), but be flexible about asking additional questions or amending them as new information comes to light;
• Be familiar with the facts of the issue and sequence of events beforehand;
• Prepare a chronology;
• Reassure witnesses that you are simply looking to establish facts;
• In advance of the meeting, provide the witness with any documents that may act as a memory prompt or help him or her to give evidence;
• Be open to answering any queries that the witness might have prior to the meeting particularly as some witnesses might be nervous about the proceedings.

Do’s and don’ts

• Do allow the witness to refer to any documents to refresh his or her memory;
• Do pause the meeting if the witness needs a break, or adjourn it if the witness is very upset;
• Do record all the pertinent facts, e.g. dates and times, names and context of behaviour; You may find it easier to have a separate note-taker to accompany you.
• Do keep calm and focused;
• Do remind the witness to keep the matter confidential;
• Don’t be afraid to question the witness’s version of events;
• Don’t encourage the witness to offer his or her opinion;
• Don’t offer your own opinion, be judgmental or speculate on the outcome of the investigation
• Don’t draw hasty conclusions
• Don’t disclose any confidential information

Interviewing Tips

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

• Can you 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.

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