# Managing Investigations

**Guidance Notes for Managers**

<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Introduction</td>
<td>3</td>
</tr>
<tr>
<td>2.0 Scope</td>
<td>3</td>
</tr>
<tr>
<td>3.0 Benefits</td>
<td>3</td>
</tr>
<tr>
<td>4.0 The Use of Internal Investigations within the University</td>
<td>3</td>
</tr>
<tr>
<td>4.1 When should internal investigations be used?</td>
<td>3</td>
</tr>
<tr>
<td>4.2 Why are internal investigations important?</td>
<td>4</td>
</tr>
<tr>
<td>5.0 The Investigation Process</td>
<td>5</td>
</tr>
<tr>
<td>5.1 Who should investigate?</td>
<td>5</td>
</tr>
<tr>
<td>5.2 Conducting investigation interviews</td>
<td>5</td>
</tr>
<tr>
<td>5.3 Notes / witness statements</td>
<td>6</td>
</tr>
<tr>
<td>6.0 Preparing an Investigation Report</td>
<td>6</td>
</tr>
<tr>
<td>6.1 Evaluating the evidence</td>
<td>6</td>
</tr>
<tr>
<td>6.2 Investigation Report structure</td>
<td>7</td>
</tr>
<tr>
<td>7.0 Dealing with difficult issues</td>
<td>7</td>
</tr>
<tr>
<td>8.0 Associated Documents</td>
<td>8</td>
</tr>
</tbody>
</table>
1.0 Introduction

1.1 The University’s Managing Investigations Guidance Notes aim to provide a framework which will assist managers to carry out any internal formal investigation process relating to staff fairly and consistently.

1.2 The University is committed to ensuring that all internal investigations are carried out in accordance with the relevant University Policy or Procedure as listed in Section 8.0 of this document.

2.0 Scope

2.1 This document provides guidance for all ‘relevant managers’ appointed to carry out internal investigations into matters relating to any member of staff within the University.

2.2 The guidance contained within this document must be used in accordance with the relevant University Policy or Procedure, as determined by the nature of the investigation.

3.0 Benefits

3.1 The existence of guidance notes in managing internal investigations will help to ensure that the University carries out all investigations fairly, consistently and thoroughly.

3.2 A fair, consistent and thorough investigation will ensure that managers can establish the facts and make appropriate informed decisions about the next steps.

3.3 A fair, consistent and thorough internal investigation will help to help fulfil the University’s legal obligations and should help avoid unnecessary Employment Tribunal claims or else improve their success when cases cannot be avoided, reducing any consequential costs and bad publicity.

4.0 The Use of Internal Investigations within the University

4.1 When should internal investigations be used?

4.1.1 Internal investigations may be required to be carried out in the following circumstances:

   i allegations of misconduct;
   ii allegations of bullying / harassment;
   iii dealing with employee grievances;
   iv dealing with employee capability issues.

4.1.2 Internal investigations must always be carried out in accordance with the relevant University procedure (e.g. Disciplinary Procedure) as determined by the nature of the issue in question.
4.2 Why are investigations important?

4.2.1 In accordance with many University HR policies and procedures, managers are required to gather information in relation to a particular allegation or issue. In the case of disciplinary investigations, managers 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.

4.2.2 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.

4.2.3 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 and demonstrated as fair and reasonable in line with the relevant University policy or procedure.

5.0 Investigation Process

5.1 Who should investigate?

5.1.1 Dependent upon the University policy or procedure being used, a relevant manager will be appointed as appropriate. The relevant manager must have received appropriate training and would normally be supported by a representative from Human Resources. Those undertaking the investigation are referred to as the Investigating Officers or the Investigation Panel.

5.1.2 The relevant manager should normally be of a level of seniority at least equal to the person or persons who are the subject of the investigation. In order to demonstrate impartiality the relevant manager 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.

5.1.3 Before commencing the investigation it is necessary to identify:

i details of the precise issue to be investigated, e.g. details of allegations made etc.;
ii suggested methodology for conducting investigations, e.g. identification of initial witnesses, copies of policy being breached etc.;
iii under which University policy or procedure the investigation is being conducted;
iv for what purpose and by whom any Investigation Report will be used.

5.2 Conducting investigation interviews

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

i other members of staff who witnessed / took part in the alleged incident;
ii other members of staff within a department;
iii relevant line managers;
iv any other person who is identified to have information relevant to the investigation.
5.2.2 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.

5.2.3 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.

5.2.4 All witnesses must be advised of a suitable meeting date, be given reasonable notice and be given the opportunity to be accompanied by a work colleague or Trade Union representative. The witness should be advised that the purpose of the meeting will be to discuss in detail their account of a particular incident / allegation which forms part of the relevant University policy or procedure.

5.2.5 In preparation for the investigation interviews the Investigation Panel should:

i ensure that a suitable private room is available to hold the interview meeting confidentially and without interruptions;
ii ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures etc.;
iii prepare a list or structure of questions in relation to the alleged incident / allegation;
iv ensure that a nominated person is available to take detailed notes of the meeting, for use within the investigation process / report where appropriate.

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

Introduction

i Explain the context of the interview, for what purpose the meeting notes and subsequent statement will be used, how and when the interviewee will be able to check the notes / statements and the importance of confidentiality.

Questioning

ii Use 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.
iii Discuss and enquire into any additional information / evidence presented whilst always returning to the prepared list / structure of questions.
iv Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. ‘bullying’ or inappropriate behaviour’ etc.
v 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

vi 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.
vii Ensure that contact details of Investigating Officer(s) are provided, and ensure confidentiality understood.
At the end of the investigation interview the Investigating Officer should have obtained from each witness:

i the names of those present or involved;
ii date / time / place of the alleged incident / allegation;
iii details of what took place, and the order in which they happened;
iv how the individual reacts to any other documents or witness evidence which is inconsistent with their account;
v the steps taken since the alleged incident / allegation, including any steps taken to resolve;
vi their preferred outcome (where appropriate).

5.3 Notes / Witness Statements

5.3.1 Any notes taken during the investigation interviews should be typed and ideally checked and signed by the witness. This is essential if a written witness statement is not required / prepared.

5.3.2 Where possible an Investigating Officer should prepare a draft witness statement for the witness using the notes from the investigation interview. The statement should record the facts, written (within reason) in the language used by the witness following the train of events. If there is any ambiguity or gap in the account these should be clarified with the witness. The witness must be given the opportunity to review the statement and must only sign to confirm it as a true and accurate version of events.

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

6.0 Preparing an Investigation Report

6.1 Evaluating the evidence

6.1.1 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 or panel must consider.

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

i direct witness evidence will usually be stronger than indirect information relating to the incident / allegation;
ii evidence which is inconsistent with documents produced at the time is questionable;
iii evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable;
iv anonymous evidence should be reviewed with caution as it is often difficult to substantiate;
v consideration should be given to any bias, motivation or influence individual witnesses may have;
vi where possible the factual accuracy of points raised in witness statements should be verified by the panel if they are material to the allegations.
It is important to remember that in reviewing the evidence and recommending appropriate courses of action, the Investigating Officer only has to show they have a reasonable belief of what happened based on their assessment of the evidence. Unlike a legal case there is no requirement to prove a case ‘beyond reasonable doubt’.

Investigation Report Structure

An Investigation Report should be written by the Investigating Officer or panel, and should normally be structured as follows:

Introduction

i 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 names of the Investigation Panel.

Methodology

ii 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, details of University Policies and Procedures reviewed, and details of any other activities undertaken as part of the investigation (watching video’s etc).

Findings / Analysis

iii 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.

iv 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)

v Where appropriate, a final section could include the conclusions drawn by the Investigation panel following the evaluation of the evidence.

vi Recommendations are not mandatory, but in the case of disciplinary investigations should indicate the recommended next steps or the initiation of any other procedure, following issues highlighted during the investigation.

Appendices

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

Dealing with Difficult Issues

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

Further or counter allegations: If the allegations relate directly to the current investigation or substantiate other information the Investigation Panel 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.

7.1.2 Confidentiality: The Investigation Panel 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, confidentiality will be maintained where possible. It is important also that witnesses understand that there may be a need for them to attend a formal hearing.

7.1.3 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 Investigation Panel. It is essential that this be communicated verbally and 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.

7.1.4 Refusal to Participate (witness): If a witness refuses to participate it is important that 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. Dependant on the case in question, it may be possible to continue the investigation even if the witness refuses to make a formal statement.

8.0 Associated Documents

8.1 Other Associated documents include:

- Disciplinary Procedure
- Grievance Procedure
- Dignity at Work Policy
- Capability Procedure
Managing Investigations
Guidance Notes for Managers

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This Guidance Note can be obtained from the Human Resources website www.sunderland.ac.uk/hr, Docushare or by contacting Human Resources.

This Guidance Note is available in larger print. Should you require this, please contact Human Resources.