**SALISBURY NHS FOUNDATION TRUST**

**Workforce Investigation Procedure**

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**1.** **Quick Reference Guide**

1.1 This document details the processes that should be followed for all workforce investigations undertaken across Salisbury NHS Foundation Trust

This document should be read and used in conjunction with the Workforce Investigation Policy and the relevant Trust Policy under which the workforce investigation is commissioned.

A flow chart detailing the workforce investigation process in full can be seen in appendix 1

1.2 **What is a Workforce Investigation?**

A workforce investigation is a systematic review process that establishes the facts about a workforce concern. The investigation, which is formal in nature, should be linked to a specific workforce policy or procedure and be used to help in the resolution of employee relations issues.

Making decisions without the completion of a thorough investigation can result in error and leave the Trust open to challenge and legal proceedings.

**2.** **Roles and Responsibilities**

2.1 **The Role of the Case Manager**

The role of the case manager is to lead and be responsible for the management and timely conclusion of the overall investigation process. It is therefore vital for the case manager to keep in regular contact with all parties so as to be able to deal with issues and questions as they arise.

The case manager’s role will include but not be restricted to:

* The commissioning of a formal investigation following an initial fact finding exercise
* Appointment of the investigating officer
* Agreeing the terms of reference for the investigation
* Reviewing exclusions and /or restrictions of practice / temporary redeployments
* Engaging with the Safeguarding team when their input is required.

On completion of the investigation the case manager, in conjunction with the People Operations team, also need to decide on the next course of action i.e. there is no case to answer or further proceedings are necessary.

2.2 **The Role of the Investigating Officer**

The role of the investigating officer is to present a fair, objective and impartial overview of the matter under investigation. As such they should, through the gathering evidence of evidence, be able to present a report that details what did and did not happen.

In relation to potential disciplinary sanctions, it is not the role of the investigating officer to prove the guilt of any party but to simply investigate whether there is a case to answer.

2.3 **The Role of the People Operations team**.

The People Operations team will advise on policy and procedure so as to ensure that the investigation is conducted in a fair and consistent manner. It is not the role of the People Operations team to lead or make decisions during the course of an investigation; this responsibility lies with the case manager.

The People Operations team will usually support both the case manager and the investigating officer throughout the investigation. Such support will include general advice linked to process and where required the sharing of more specialist HR knowledge.

2.4 **The Role of the Trade Union Representative**

The role of the Trade Union Representative is to support the employee during the workforce investigation process. This role will include advising the employee on policy and procedure to ensure that fairness is maintained at all times. While it is not the role of the Trade Union Representative to answer questions on behalf of the employee, they can make representations, offer relevant supplementary information that adds value to the hearing and raise points of order.

If the employee does not have access to a Trade Union Representative, a workplace colleague who has no connection with, and is impartial to the investigation, can provide support.

**3.** **Organisation/Case Managers Preparation**

3.1 **Deciding if an Workforce Investigation is Necessary**

Incidents and issues will arise in any workplace and ensuring that they are dealt with fairly and consistently is vitally important. This at times may warrant the undertaking of an investigation

However, in the first instance, the Trust should consider whether an informal conversation or action could resolve the matter. Many problems that arise within the workplace can be settled quickly and without undue process and an informal solution should always be considered.

Importantly any informal decisions and subsequent actions should be clearly documented so that all parties are aware of their responsibilities

3.2 Where informal resolution is not possible or not successful, the Trust must contemplate the below points when considering whether a workforce investigation is necessary.

**Initial Fact Finding Assessment**

The Trust is committed to embed a culture that supports fairness, openness and the informal resolution of concerns wherever possible. Therefore before a formal investigation is commissioned the relevant line manager should undertake an initial fact finding assessment. An example of the type of questions that should be considered can be seen in appendix 2.

**Criminal Proceedings**

Where allegations against an employee raise the possibility of fraudulent activity this must be reported to the Trust’s Counter Fraud team (TIAA) for further advice.

There may be situations where Counter Fraud needs to investigate a matter before the Trust is able to commence its own internal workforce investigation. The Counter Fraud team may also need to report the allegations to the police.

In such instances the Trust will consult with the police to establish whether an investigation into any other matters may impede the police investigation. It should be noted that this may delay the Trust’s own investigation process.

**Safeguarding Concerns**

Where allegations against an employee result in a safeguarding concern, the line manager must contact the Safeguarding team for expert advice and support.

Such advice may result in the Trust becoming involved in the following formal safeguarding processes:

* A police investigation linked to a possible criminal offence.
* Enquires and assessment by the responsible Local Authority to ascertain whether a child or vulnerable adult is in need of protection / support.
* An internal workforce investigation.

In certain circumstances such processes can run concurrently with an internal trust workforce investigations but this would need to be considered on a case by case basis.

In all scenarios the local and national safeguarding requirements, including actions of the Police, must be observed. This may include a delay in informing the employee of the nature of an allegation until the consent of other agencies has been obtained. In circumstances where a criminal offence is thought to have been committed it is important that potential forensic evidence is secured as quickly as possible.

Workforce investigations in any such scenario should be clearly identified with the possible link to safeguarding included within the Terms of Reference.

Please visit the safeguarding pages on the Trust Intranet or speak to a member of the People Operations team for further information.

**Possible Temporary Measures**

Most concerns can be resolved without removing an employee from their typical working environment. However on occasions, the Trust may need to consider the introduction of a temporary measure while an investigation is agreed, planned and conducted.

Such temporary measures could include suspending an employee from duty or redeploying them to another area of the Trust. Please refer to the Trust’s Exclusion and Restriction to Practice Policy for further information.

3.3 **Initial Fact Finding Assessment Outcome**

Following this initial fact finding assessment, a decision as to the next course of action should be taken in consultation with a relevant senior manager and a member of the People Operations team. These actions may include:

* No further action required / reflection & learning.
* Matter to be handled under the Trust’s Performance Management Policy.
* Matter to be resolved using a Formal Conduct Action Plan.
* To undertake a formal investigation

In all circumstances where a concern has been raised by another employee they should, at an appropriate point, be thanked for coming forward and be assured that the raised issues will be addressed appropriately.

3.31 **No Further Action:**

Where the allegation is not substantiated or it is clear that no misconduct has occurred follow, the relevant senior manager will ensure that all parties are informed of this decision and close the matter. This activity may be delegated to an appropriate line manager.

On occasion where it is deemed no further action is required it may be useful for a reflective discussion to take place with the individual/s involved. This could be linked to such things as wider learning, clarity as to roles and responsibilities and the value of team working.

If it appears that the complaint was raised maliciously then disciplinary action may be taken against the complainant. The advice of the People Operations team must be sought in such situations.

3.32 **A Possible Case to Answer - To be handled under the Trust’s Performance Management Policy**

When there is initial evidence that the employee lacked training, knowledge or there is significant mitigation that demonstrates that suitable support was not in place then it may be appropriate to manage any raised concerns through the Trust’s Performance Management Policy.

Where there is any uncertainty in relation to the above, advice should be sought from a senior manager and the People Operations team to ensure that the most appropriate route is followed.

3.33 **A Possible Case to Answer – Low Risk/Low Impact Issues to be managed through a Conduct Action Plan**

Low risk and/or low impact occurrences of misconduct such as lateness or smoking on site, should be dealt with informally in the first instance.

Where it is determined that an informal route is appropriate, the Line Manager will make time (this could be within an established meeting) to discuss the concerns and information collated. This conversation should take a counselling style approach and include cautionary advice that, if further misconduct of this nature occurs, then action under the formal Disciplinary Procedure may be expected. A record of the conversation including a completed Conduct Action Plan (see appendix 3) should be kept on the employee’s personnel file.

3.34 **A Possible Case to Answer - Investigation Required**

When it is deemed that an investigation is required the employee should be informed of this verbally by a senior manager with a follow up letter confirming the next stages. This letter must clearly detail the raised concerns/allegations and highlight the processes that will be followed to allow investigation of the matter.

An example template letter is included as appendix 4.

Importantly, an informal resolution to the matter can still be considered as an option at any stage of the investigation process so long as all parties agree.

**4. What is to be Investigated?**

When initiating an investigation, the senior manager will usually act as case manager and should clarify the precise purpose and scope of the investigation.

To aid this, Terms of Referenceclearly detailing the remit of the investigation and the roles and responsibilities of the investigating officer should be developed. The case manager should seek support from the People Operations team in relation to this.

The Terms of Reference should clarify such things as:

* The purpose of the investigation
* The scope and remit of the investigation i.e. what exactly is to be examined.
* How the investigation findings should be presented. For example, an Investigating Officer will be required to present their findings in an investigation report
* Who the findings should be reported to and who should be contacted for further direction if unexpected issues arise. For example the case manager or the People Business Partner (or both).
* The timescales within which the investigation should be completed

A Terms of Reference template can be found in appendix 5

4.1 **The Importance of Clear Terms of Reference**

**Clear Terms of Reference will…**

* Help completion of the investigation in a timely manner.
* Clarify the exact role of the investigating officer
* Clarify how the investigation officer should present their findings.
* Ensure all key facts are responsibly investigated.
* Ensure the investigating officer only collects information and facts relevant to the allegation(s).
* Minimise the negative impact on employee morale caused by investigation meetings.
* Minimise disruption to the organisation’s daily business processes.
* Help in the management of unexpected or additional information that comes to light during the investigation process.

4.2 **Who should be appointed the Investigating Officer?**

**Questions to consider when choosing an investigating officer:**

* Are they personally involved in the matter or allegations being investigated?
* Would the appointment raise any conflict of interest concerns?
* Are they likely to be influenced by people involved in the matter?
* Might they be involved in any subsequent decision making on the matter?
* Do they have a good knowledge of the area/department and how it operates?
* What is their availability during the investigation’s provisional time-frame?
* Are they trained and/or experienced in how to conduct investigations?
* What training or support may they require?
* How confident are they at communicating both verbally and in writing?

The People Operations team will support the case manager in the appointment of an investigating officer.

4.3 **How long should an Investigation take?**

A complicated matter may take several weeks to investigate properly whereas a relatively simple matter may only require a very short investigation. In relation to this, the Trust expectation is that an investigation should be concluded within 4 to 10 weeks of the start date depending on its degree of complexity.

At times it may be necessary for the investigation officer to request an extension to an agreed timeframe so as to facilitate a thorough investigation. Such a decision would need to be agreed by the case manager and the People Operations team and then communicated to the employee under investigation in writing, detailing the reasons behind the decision.

While an investigation should be completed as quickly as possible, it also needs to be sufficiently thorough so as to be fair and reasonable. This is particularly important if the matter could result in disciplinary action or where an Employment Tribunal claim could follow.

Any delay to the investigation’s conclusion should be explained to those involved, and included in the final report.

4.4 **What if new Issues come to Light?**

If a new matter comes to light during an investigation, the investigating officer and the case manager may need to agree changes to the Terms of Reference, or to authorise a further investigation. In such situations the case manager must seek guidance from the People Operations team and inform the employee in writing of any changes (and the reasoning behind such changes.)

It is usually preferable to incorporate the new issue/s into the existing investigation unless this would cause the investigation to become unduly complicated.

4.5 **Maintaining Confidentiality**

An investigation must be kept confidential at all times so as to:

* Reduce any negative impact that might be felt by the parties involved in the case.
* Reduce the risk of witnesses discussing or agreeing how to present their evidence.
* Help ensure that general staff morale is not unduly affected and that services can continue as intended.

In all investigations it is important to explain the need to maintain confidentiality at all times to all employees and persons involved in the matter. It should be made clear that the Trust will view any deliberate breach of confidentiality as a serious matter that could lead to disciplinary action.

For clarity however, an employee is allowed to discuss the matter with their Trade Union Representative where one has been appointed, or their designated work colleague.

**5 The Investigating Officer’s Preparation**

5.1 **Check Policies and Procedures**

The investigating officer should familiarise themselves with of all policies and procedures that may be relevant to the matter in question. Even if the investigating officer is already aware of these documents, they should be re-read to refresh knowledge and ensure that correct actions and processes are followed at all times.

5.2 **Identifying Possible Sources of Evidence**

There is no definitive list for an investigating officer to rely on in relation to the sources of evidence they may need to collect/evaluate. Clearly each investigation will be different and this will affect the information that needs to be collected. Therefore the investigating officer should consider:

* The investigation’s Terms of Reference and what they have been asked to establish
* What sources of evidence may be available to help establish the facts of the matter.
* How this evidence might be collected.
* Whether there are any time constraints for collecting the evidence, such as a witness going away on annual leave or CCTV recordings that are routinely deleted after a set period of time

As the investigation progresses, other possible sources of evidence may come to light or become relevant. However, the investigating officer should initially remain focussed on the Terms of Reference for the case so that a fair and reasonable investigation is delivered.

Should additional material come to light that is relevant to the investigation it may be necessary to amend the Terms of Reference for the case. This process is discussed in section 4.3

5.3 **Deciding in which Order Evidence should be Collected**

The order in which evidence should be collected will be dependent on the matter under investigated.

Where the allegation is relatively straight forward, the investigating officer should hold some or all of the investigation meetings at an early stage of the investigation. In particular, the person who raised the complaint or grievance would usually be interviewed first so as to ensure that the investigating officer has a full understanding of the matter.

In matters where disciplinary sanctions may be needed, the investigating officer should also consider interviewing the employee/s under investigation at an early stage. Doing this can help establish which facts are disputed, and allow the investigating officer to focus energies on these areas.

Also, if the accused admits the allegations against them are correct it might remove the need to investigate the matter as fully as planned. For example, investigating why the incident occurred rather than needing to prove that it did.

Where there is considerable physical or written evidence, or the matter is very complex, the investigating officer should consider whether to seek advice and support before interviewing the employee/s under investigation. For example this may include speaking to a subject matter expert who is able to improve the understanding of the investigating officer in advance of the investigation meeting – this will help ensure that appropriate questions are raised.

**For example…**

Ben is asked to investigate an allegation about a Receptionist intentionally ‘cutting off’ callers. As he is unsure of the evidence that might be available he decides that before talking to the person under investigation he should gather the phone records linked to that department and hold an investigation meeting with an IT expert who can help him understand what the data may reveal.

Doing this helps Ben to understand the allegation further and to develop appropriate questions to ask of the Receptionist.

5.4 **Informing an Employee they are under Investigation**

If an employee is under investigation, they should be informed verbally and in writing of the allegations against them and that an investigation is be carried out (see appendix 4). They should also be notified of who to contact if they have any questions during the investigation. This would typically be either the investigating officer or their line manager.

In most situations, the employee should be fully informed when an investigation into their actions is instigated. Investigations should only be concealed if compelling reasons such as the employee may be able to influence witnesses or tamper with evidence are identified.

Such a decision would need to be authorised by the Divisional People Business Partner.

**For example…**

Alison is asked to investigate an allegation relating to computer misuse. The individual under investigation has use of a Trust laptop and Alison needs an expert to find out what exactly is on the laptop. She therefore decides that she cannot inform the staff member of the full reasons for the investigation until she has access to their laptop because they may be able to conceal or delete evidence.

After collecting the laptop there is no reason not to inform the employee of the investigation and they are made aware of the allegations against them before any investigation meetings take place.

5.5 **Identify Possible Parties Relevant to the Investigation**

Where individuals are able to provide information relevant to the investigation, the investigating officer should interview them and/or ask them to provide a witness statement.

Where a large number of people witnessed the same incident, it is not usually necessary to interview them all. In such cases the investigating officer should choose to interview some of the witnesses and if their accounts are consistent, these should be used to be representative of the incident.

Additional witnesses would only need to be interviewed if the investigating officer believes/or was led to believe that additional information may be available.

However, if accounts differ then the investigating officer may need to interview all of the witnesses to ensure that all of the available information is collected.

**For example…**

Sarah is investigating a dispute between two employees which occurred during lunch in the staff restaurant. Around 20 people were in the restaurant at the time but Sarah decides to initially interview the two people involved in the dispute and four witnesses to see if a consistent version of events can be found.

While the two employees involved in the dispute have differing version of events, all four of the witnesses give a very similar account. Sarah decides that she does not need to interview the other witnesses although she will ask those who have already been interviewed whether in their opinion, any of the other witnesses might be able to provide any additional information.

5.6 **Arrange where a Meeting will take Place**

An investigation meeting should take place in a private room, where interruptions are unlikely to occur. Usually, meetings should be at the employee’s normal place of work and during working hours. However, where a greater degree of confidentiality is required it may be necessary to hold the meeting outside of normal working hours, or on an alternative site. In some circumstances it may be appropriate to conduct witness interviews by telephone in order to prevent unnecessary delays.

**For example…**

Ian manages a team of 14 administrators who all work in the same open plan space as he does. The regular meeting spaces are all within sight of the staff and they are typically used for routine meetings/purposes.

When Ian raises a grievance against a colleague, the investigating officer quickly establishes that any meetings held in the office space would be noticed and could quickly lead to gossip. In order to handle the investigation sensitively, the investigating officer arranges to meet Ian in a location away from the usual work space.

5.7 **Inviting Relevant Parties to an Investigation Meeting**

The investigating officer should provide employees with advance written notice of their intention to invite them to an investigation meeting.

An example template letter can be found in appendix 6

5.8 **Keeping Line Managers Informed**

Throughout the investigation the investigating officer, while maintaining confidentiality, should liaise regularly with the line managers who are responsible for allowing employees to attend investigation meeting.

Keeping line managers informed of arrangements is important and will help reduce the impact that the investigation may have on the delivery of their service.

**6. Handling an Investigation Meeting**

6.1 **What is an Investigation Meeting?**

An investigation meeting is simply an opportunity for an investigating officer to interview someone who is involved with, or has information on, the matter under investigation.

An investigation meeting must never turn into a disciplinary hearing. Where it is thought that disciplinary action may be necessary a separate meeting must be arranged.

6.2 **Can an Interviewee be Accompanied?**

Employees have the right to be accompanied to an investigation meeting by either a Trade Union Representative, a workplace colleague or where agreed by the case manager, a family member.

6.3 **Trade Union Representation**

Trade Union representatives, when asked to support a member will:

* Advise, support and accompany the individual appropriately throughout the investigation process.
* Work constructively to ensure that best outcomes are achieved in relation to the given circumstances.
* Work in partnership with the investigating officer and the People Operations team to facilitate a swift conclusion to the investigation

6.4 **Non – Trade Union Representation**

* The employee may also be accompanied to an investigation meeting by a workplace colleague who has no connection with and is impartial to the investigation i.e. they have not been named in any statement linked to the matter. In certain circumstances i.e. when acting as an advocate for an employee with a disability and where agreed by the case manager, this could be a family member.
* All representatives are expected to maintain confidentiality both during and subsequent to the completion of the investigation.

6.5 **Other points for Consideration**

* Where a witness feels they need additional support to complete an investigation meeting, they should discuss with the People Operations team or their Trade Union Representative.
* In individual cases, for example where employees are covered under the Equality Act 2010, a reasonable adjustment might be considered when the employee does not have access to a representative, yet feels that one should be in attendance. In such circumstances discussion with the case manager and People Operations team should take place to agree the alternative options that may be available.
* Where English may not be the interviewee’s first language, translation services will be sought
* There is no right to legal representation at any stage of this procedure.

6.6 **Documenting an Investigation Meeting**

Each interview should be documented whether in the form of written/typed notes or in agreed circumstances through a digital recording. When notes/records of the interview are taken, the interviewees must be given the opportunity to review, accept or amend and then sign the notes. The notes taken do not need to record every word said but should accurately capture the key points of any discussion.

An example interview template is included in appendix 7

Where interviews are digitally recorded these will ordinarily be typed up and form part of the final report; if they are not typed, the individual will be supported to listen to the recording and sign a statement confirming their acceptance for accuracy.

All parties must be in full agreement for digital recording to be utilised.

6.7 **Investigation Meetings – Points to Consider**

Investigation meetings can be difficult and emotional, especially for those who have raised a complaint or who are under investigation. Ideally the investigating officer should follow a structured process, with pre-planned initial questions to help ensure that the interview remains focused and on track.

6.8 **The Interview Process**

|  |  |
| --- | --- |
| Before the meeting takes place the investigating officer should: | * Establish how the interviewee may be able to help with the investigation and plan initial questions accordingly. * Book an appropriate time and place for the meeting. * Write to the employee inviting them to the meeting and detailing their rights to be accompanied. |
| At the start of the meeting the investigating officer should explain: | * Who is present and why. * Their role as investigating officer. * The purpose of the meeting. * The need for confidentiality during and after the meeting/ investigation. * Who will see/have access to the interviewee’s witness statement * That extracts from the interviewee’s witness statement may be used in an investigation report/formal process. |
| During the meeting the investigating officer should: | * Ask questions to gather facts related to the matter under investigation. * Probe the interviewee in a non-confrontational manner so as to gather as much information as possible * Seek evidence that may substantiate the information provided * Record responses and any refusal to respond. |
| At the end of the meeting the investigating officer should: | * Check if there is anything else the interviewee thinks is important or relevant to the matter in question before ending the interview. * Ask if there are other witnesses that they think should be interviewed and why. * Explain that they may need to be interviewed again if further information is needed. * Agree and sign the interview notes with the interviewee at the end of the process where practical or explain the process for the interviewee to read, sign and return their statement within 5 working days of receipt (see appendix 8). |
| After the meeting the investigating officer should: | * Review the topics discussed at the meeting and consider how the gathered information aligns with or contradicts the allegations under investigation. * Consider whether the meeting suggested that the collection of further evidence or the arranging of further interviews might prove useful. |

Although the Investigating Officer should only plan to interview each employee once, it may become necessary to interview specific individuals again if new information arises or points need further clarification.

6.9 **Investigation Meetings – Tips and Techniques**

Developing interview techniques through training and experience is vital for an investigating officer. Some tips and techniques are included in appendix 9

6.10 **Reluctant Witnesses**

Some employees may be reluctant to provide evidence for an investigation. In such situations the investigating officer should explore the reasoning behind this and provide assurance as to any raised concerns.

Importantly the investigating officer should try to avoid anonymising witness statements whenever possible so as to limit the potential disadvantage felt by the employee under investigation i.e. they are not effectively able to challenge the evidence against them.

Only in exceptional circumstances where a witness has a genuine fear of reprisal, should the investigating officer agree for a witness statement to be anonymised. However it should be recognised that if the matter becomes subject to legal proceedings, and it is necessary in the interests of fairness, the Trust may be required to disclose the names of any anonymised witnesses.

Where an investigating officer decides that circumstances do warrant the anonymising of a statement, the interview should be conducted as normal i.e. without consideration of the need for anonymity at that point. The Investigating Officer should then reflect on which parts of the interview and subsequent notes need to be omitted or redacted to prevent identification. Advice on this must be sought from the Divisional People Business Partner.

6.11 **Handling a Refusal or Failure to Attend an Investigation Meeting**

If an employee refuses to attend an investigation meeting, the investigating officer should try to find out why. It may be that they are unable to attend for a legitimate reason, such as illness, and in such cases the investigating officer should look to rearrange the meeting or seek an alternative method to gather the required information i.e. by telephone

Where an investigating officer does not believe a legitimate reason has been given they should remind the employee that failure to attend a meeting may be viewed as refusing to observe a reasonable Trust request and ultimately could result in disciplinary action.

6.12 **Employee Relationships and Possible Motives**

When interviewing a witness the investigating officer should be alert to any possible motives or biases. They should make tactful enquiries into the relationship between the witness and other individuals involved in the matter given that this may add or detract from the validity of their statement.

Usually this can be achieved when interviewing the witness themselves and, where relevant, the person under investigation. However, in some circumstances the investigating officer may also decide it necessary to ask other witnesses for their views on the impact that a particular relationship might have on the investigation.

Importantly the investigating officer should be careful with the tone and phrasing of their enquiries and remember that the witness themselves are not under investigation.

**7. Gathering Evidence**

When gathering evidence the investigating officer should remember that their role is to establish the facts of the matter. They should therefore consider all evidence equally i.e. not just evidence that supports the allegations but also evidence which could undermine the claims.

Once collected the investigating officer should objectively analyse each piece of evidence and consider:

* What does the evidence reveal?
* Are there any doubts over the credibility and reliability of the evidence?
* Is the evidence supported or contradicted by information already collected?
* Does the evidence suggest that further investigation is needed?

**For example…**

While conducting an investigation Vicki is told by the employee under investigation that they were not working on the day of the alleged incident.

When trying to find evidence to support or contradict this claim, Vicki remembers that employees need to use their ID card to gain entry to the building. She makes enquiries using the employee’s card ID and finds out that the card had been used in the vicinity of the incident on the day in question. This may call into question the reliability of the information provided by the accused.

7.1 **Witness Statements**

A witness statement will usually be a signed copy of the notes obtained from the investigation meeting. The interviewee should be provided with a copy of these notes to check for accuracy.

If the handwritten notes are clear and can be agreed with the witness, the statement can be signed off at the end of the meeting.

Where this is not practical the witness should be sent a copy of their statement with a request to confirm accuracy within 5 working days of receipt (either by signing the document and returning or via email confirmation.)

An interviewee should be allowed to amend their statement but should sign any amendments they make to the original document. Where changes to the statement are made that the investigating officer believes contradict what was said at the meeting, it may be necessary to note this and include both the original and amended statements in the report.

If an interviewee refuses to sign their statement, the investigating officer should request a reason for this and attempt to resolve the issue. If a resolution cannot be reached, the investigating officer should include the statement in their report and acknowledge the interviewee’s refusal to confirm that the statement was an accurate reflection of the meeting.

7.2 **When Might a Statement be Provided Without a Meeting?**

The Investigating Officer may at times decide that a witness statement can be supplied without a meeting taking place. Such circumstances may include:

* If a witness is not a Trust employee i.e. a patient
* When the facts required from a witness are very simple.
* Where a witness is ill and unable to attend an investigation meeting.

The Investigating Officer should provide a reasonable deadline for completion of the statement which should provide the witness with specific questions to answer. The witness should also be asked to include the following information:

* Their name and, where applicable, job title.
* The date, place and time where they observed/heard any relevant information.
* What they saw, heard or know.
* The reason why they were able to see, hear or know about the issues.
* The date and time of statement.
* Their signature.

A witness statement supplied in writing will be of limited use where there are doubts about the witness’s account or where the witness needs to be probed for further details.

7.3 **Written Records and Documents**

The investigating officer should collect all documentation that may be useful to help establish the facts of the matter. This might include such things as initial witness statements, staff rotas, training records, incident forms and local operating procedures. These types of document can help in the corroboration or contradiction of collected evidence and can also be useful in highlight areas where further investigation may be warranted.

**For example…**

Paul is investigating a grievance that alleges a manager has been bullying an employee. He held an investigation meeting with the employee who claimed the manager had called him several derogatory names in private but had also been aggressive to him in emails.

Paul collects all emails between the two for the last three months and analyses the discussions.

At an investigation meeting with the manager, Paul is able to explore the content of several emails and probe the manager about the tone and language used.

7.4 **Physical Evidence**

There may be physical evidence, such as Trust CCTV and computer or phone records which are relevant to a workforce investigation and which can be obtained lawfully without breaching the staff member’s rights.

If physical evidence is collected, the investigating officer must document what it is, how it was collected, why it may be relevant and what it highlights.

Any physical evidence gathered, for example CCTV or camera recordings should also be retained securely in accordance with the Trust’s data processing guidance in case of the need for its future use.

7.5 **Using CCTV and Other Recordings as Evidence**

The Trusts Operational CCTV Policy clarifies the use of CCTV across the Trusts premises. The main purpose of CCTV is to prevent and detect crime and therefore maximise the safety of patients, staff and others who visit Trust sites.

The CCTV systems are also registered with the Information Commissioner’s Office thus allowing the Trust to use the recordings when investigating incidents. As this is the case, CCTV systems may be reviewed to investigate concerns and the recordings captured may be used as evidence in disciplinary and grievance proceedings.

Investigations must be objective and the Trust should only use CCTV recordings as evidence where it is not practicable or possible to establish the facts of the matter through the collection of other sources of evidence.

It should also be noted that CCTV footage may also be used to disprove an allegation.

7.6 **Considerations if Searching Personal Possessions**

A search of personal possessions must only be conducted with consent of the individual and only in exceptional circumstances where there is a clear and legitimate justification for the search to occur. Such a search can only occur on Trust property,

7.61 When consent is given a search of a person’s outer clothing (coats, jackets etc.) can take place but these must be removed from the person first. A search of the individual themselves should not take place as this could lead to an allegation of assault.

Any such personal search must be undertaken by a police officer who have powers to carry out such actions.

7.62 Where an employee has the use of a desk or locker or similar item belonging to the Trust a manager may search these, but where possible the employee should be invited to be present. A second manager should also be in attendance to witness the search.

7.63 Although the legality of searching has been defended, it is essential that staff act appropriately and in good faith. Searching of an employee or their possessions is a highly contentious issue and without consent would almost certainly be seen as a breach of the mutual duty of trust and confidence between employer and employee, and may result in allegations of assault.

7.64 If the worker refuses to give consent or cooperate with a search and where it is believed that a criminal offence may have been committed, the Trust would be advised to contact the police.

However it should also be considered that an employee may have a legitimate reason to refuse a search, and managers should be sensitive to, and look to resolve, other factors that may explain a refusal.

7.65 All conducted searches must involve two managers for corroboration and to negate the possibility for allegations to be made

7.66 Details of any search carried out must be recorded in the individuals personal file stating:

1. Date/Time/Location
2. What was being searched
3. Who was present
4. What was the purpose of the search
5. Any items seized

8. **Writing an Investigation Report**

Once the Investigating Officer believes they have established the facts of the matter as far as reasonably possible, they will need to produce an investigation report that explains their findings.

A report template can be found in appendix 10

8.1 If the investigating officer believes there is no case to answer, this should be discussed with the case manager prior to writing the report, as such a decision may negate the need for the production of a full report. This decision should be made in partnership with the Divisional People Business Partner.

8.2 The investigation report should cover all the facts that were and were not established, and highlight areas where mitigating circumstances may need to be considered. To exclude any information may leave the investigation open to accusations of bias or filtering of evidence.

8.3 The report should reflect the investigating officer’s own conclusions. While an Investigating Officer may seek advice from a third party such as a People Business Partner, the conclusion to the investigation should be their own.

8.4 **Writing a Report – Structure**

A consistent approach to the completion of each section of the investigation report is essential if all allegations detailed in the Terms of Reference are to be considered.

**An Investigation Report Should Therefore Include…**

|  |  |
| --- | --- |
| Introduction | * Name and job title of the case manager * Name and job title of the person who conducted the investigation. * A brief overview of the circumstances that led to the investigation. * The Terms of Reference of the investigation and any subsequent amends. |
| Process of the investigation | * How the investigation was conducted. * The evidence that was collected. * Whether any evidence was not/could not be collected and why. * Names and job titles of all witnesses. * Whether any witnesses could not be interviewed and why. * An explanation as to why witness statements have been anonymised if applicable. |
| The investigation findings | * Summarise the key evidence from each witness statement. * What facts have been established. * What facts have not been established. * Whether there are mitigating circumstances to consider * Whether there is any other relevant information to consider. |
| Conclusion of report (if required) | * A clear statement as to whether each allegation is substantiated, unsubstantiated or whether there is insufficient evidence to make an informed decision (and why) |
| Supporting documents | * Copies of all documents and witness statements collected and referred to in the report should be included and clearly referenced. |

8.5 **Writing a Report – Tips and Techniques**

When writing the investigation report the investigating officer should consider who may read the report once completed - this could include the employee who raised the concern and/or the employee under Investigation. The report should therefore:

* Be written in an objective style.
* Avoid nicknames and jargon and explain acronyms
* Use the same form of address for all parties referenced i.e. names not initials
* Use appropriate, non-technical language wherever possible.
* Stick to the facts of the matter.
* Be concise.
* Include all of the evidence that was collected.

8.6 **Reporting what is Likely to have Happened**

While reporting with absolute certainty on a matter is desirable this may not always be possible. An investigating officer should therefore arrange their findings into:

* **Substantiated facts**:

Where the facts are not in dispute - they can simply be reported as factual.

* **Contested facts:**

Where the facts are contested or contradictory - the investigating officer should determine what, on the balance of probability, took place (please see below)

* **Unsubstantiated claims**:

Where an investigating officer is unable to substantiate an allegation they should consider if further investigation is reasonable, or report, that they are unable to draw a conclusion linked to that specific claim.

**The balance of probability**

The investigating officer should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. In such circumstances the investigating officer will need to decide whether, on the balance of probability, one version of events is more likely than another – the investigating officer should also provide their reasoning for this decision.

Unlike criminal law, the investigating officer conducting a workforce investigation does not need to find proof beyond all reasonable doubt that the incident took place. The investigating officer only needs to decide that, on the balance of probability, an incident is more likely to have occurred than not.

**Malicious complaints**

A further issue that the investigating officer may need to consider is whether an employee has raised a malicious complaint. In such situations the investigating officer must carefully consider the collected evidence and must be 100% sure of their findings before escalating the issue.

If the investigating officer perceives a complaint was clearly malicious in nature they must discuss this as a matter of urgency with the case manager and the People Business Partner.

The case manager will then decide if additional actions are required

8.7 **Requests to make a Recommendation**

The investigating officer should notsuggest a possible sanction (e.g first written warning) within their report as this could influence the outcome and future stages of the case.

**9. Following Completion of the Investigation**

9.1 **Concluding the role of the Investigating Officer**

Once the investigating officer completes and submits their investigation report, their involvement in the case would typically end. Exceptions to this are detailed below:

* **Discussing the report in person:**

Where additional clarity is needed, the investigating officer may need to discuss their findings with further the case manager.

In such cases the focus of the discussion should only be to decide whether further investigative steps are necessary. Possible disciplinary sanctions should not be discussed

* **Attending the Disciplinary Hearing**:

The investigating officer may also be required to attend a subsequent hearing. However such attendance would only be in a fact giving capacity. The investigating officer should not be there to provide opinion or present the case against an employee.

* **Input into policy or procedure review**:

Depending on the needs of the case it may be appropriate to use the expertise gained by the investigating officer to advise on the amendment or updating of a policy or procedure.

If an investigating officer continues to be involved in the process for any other reason, it may result in a perception of bias and this should be avoided at all times.

It should be the case manager and not the investigating officer who makes the final decision whether advancement to a disciplinary hearing is justified.

9.2 **Recommendations Unrelated to the Investigation Matter**

During an investigation the investigating officer may identify other issues that, while outside the direct scope of the investigation, may still require action. Such issues should be reported to the case manager in a separate document.

**For example…**

While investigating a grievance linked to a request to work part-time, James realises the Trust’s flexible-working policy needs to be updated to bring it in line with recent law changes. He also discovers that recently promoted Managers have not been trained in handling flexible working requests as per the Trust policy.

James does not include these issues in his report as they are not relevant to the actual matter being investigated. However, in a separate document, he does recommend that the policy urgently needs reviewing and that several managers should be offered training.

9.3 **Clarifications and Further Enquiries**

On occasions an issue may be identified during a formal hearing which had not been considered during the investigation. The hearing may therefore need to be adjourned while the Chair of the hearing discusses and clarifies the matter with the case manager.

Only in exceptional circumstances should there be a need to re-investigate the whole matter. However, the Chair may be required to investigate the new material and could choose to do that themselves or delegate this to the case manager or original investigating officer.

Approaching the matter in this way allows either the new argument to be fully considered or a deficiency in the original investigation to be rectified. This would be expected to happen before the hearing is reconvened and a final decision is made.

**10. Actions Post Investigation**

**10.1 Storage of Investigation Reports**

There is a need to retain investigation reports for 6 years, following the conclusion of a case. This is in-line with The NHS Records Management Code of Practice.

To do this, the People Operations team will ensure that the master report is electronically copied and stored securely. Access will only be provided to those who have authority to view the document.

Once stored electronically, all hard copies of the report should be destroyed.

Letters sent to the employee during the investigation i.e. invite and outcome letters should be retained and placed in the personal file by the line manager for reference.

**11. Other Considerations**

**11.1 Health, Wellbeing and Support available for Staff involved in an Investigation**

Due to the nature of a workforce investigation and the impact this may have on those involved, additional support may be necessary.

The Case Manager, Investigating Officer and Line Managers should be aware of this and ensure that regular contact and appropriate updates are provided to all involved.

The Health and Wellbeing of all involved staff members must remain at the forefront of the investigation. The Occupational Health team should be contacted for further information linked to current support offerings.

**Appendix 1**

**The Investigation Process**

**STEP 1: Organisation/Case Managers Preparation**

* Decide if an investigation is necessary by completing an initial fact finding assessment. The Line Manager or Senior Manager will decide on next steps following the initial fact find.
* Appoint an appropriate Case Manager – The People Operations team will support in this matter
* Appoint an appropriate Investigating Officer
* Case Manager completes the Terms of Reference document detailing the remit of the investigation and precisely what needs to be investigated.
* The Case Manager and Investigating Officer convene a meeting to discuss their roles and responsibilities in order to
* Points of contact for the employee under investigation should be established.

**STEP 2: Investigating Officers Preparation**

* Familiarise themselves with the Terms of Reference for the investigation.
* Identify the evidence that may need to be gathered – and who may be able to provide this
* Contact the employee to detail the investigation process
* Contact witnesses to arrange investigation meetings

**STEP 3: Handling an Investigation Meeting**

* Confirm who will accompany employee/s at the meeting, i.e. Trade Union Representative, Workplace Colleague or where applicable/agreed, family member
* Plan what questions need to be asked and the order of who needs to be called to the investigation meetings.
* Interview the parties involved and any relevant witnesses.
* Follow guidance in this document related to reluctant witnesses or refusals to meet.

**STEP 4: Gathering/Agreeing Evidence**

* Interview notes to be agreed and signed at the end of the interview process where practical. If not to be returned within 5 working days
* Collect and review any relevant written records and documents e.g. timesheets, personal files etc.
* Collect all relevant physical evidence e.g. CCTV, emails, incident forms etc.

**STEP 5: Writing an Investigation Report**

* Plan the completion of the report – key points to be detailed
* Report what has actually occurred i.e. what is evidenced, including any event/s that may contradicts the allegation(s).
* Ensure the report is checked prior to sending to Case Manager, e.g. grammar, spelling, accuracy, consistency and attention to detail.

**STEP 6: After an Investigation is Completed**

* Investigating Officer submits the report to the Case Manager who makes a decision on the next steps i.e. further proceedings (disciplinary and potential appeal) or no case to answer

**STEP 7: Post Investigation**

* If the matter proceeds to a hearing the Investigation report will be used to help inform that hearing and any subsequent appeal process.
* OD and People to ensure that a master report is electronically copied and securely stored with restricted access. All other copies to be destroyed.
* Ensure any recommendations unrelated to the matter are considered and actioned, e.g. reflective case learning, system and process changes etc.

**Appendix 2**

**Undertaking an Initial Assessment – is a Workforce Investigation Necessary?**

In order to carry out an initial assessment linked to an allegation, the following questions should be considered:

1. **Event**

* What happened/what is alleged?
* Were there any witnesses?
* Have staff been asked to write statements or have written statements already been taken?
* Clarification of dates, times; confirmation with rota to ensure validity.
* Should those involved have known that the alleged actions were unacceptable i.e. have they received training, been informed of correct expectations?
* Have they acknowledged the incident, shown insight or remorse?

1. **Documentation**

* What evidence is available, consider as sources:
  + Supervision notes
  + Appraisal
  + Support/care plans
  + MLE
  + Team Meeting notes

Could these be provided if requested?

**3. Policy**

* Has a policy been breached?
  + If so which policy?
  + What is the nature of the breach
  + Could such a breach amount to an act of misconduct or gross misconduct

**4. Assessment of impact**

* What was the impact on:
  + The service or wider department
  + The individual
  + The service user
  + Is the employee a member of a professional body?
  + Did the actions, or could they have caused harm to a staff member or service user?
  + Is a referral to a professional body or the DBS a potential outcome given the circumstances?
  + Is a referral to safeguarding required? Please contact the Trust’s Safeguarding Team if you have any questions at all

**5. History**

* Has the allegation happened before?
* Are there any live warnings?
* If yes, was the previous event managed informally using a Conduct Action Plan? Or,
* Was it managed informally using a performance improvement plan? (if yes, is an investigation the correct route?)

**6.** **Risk**

* Is there a risk of further repeat behaviour?
* Is there a risk to service users, staff, the Trust or other stakeholders?
* Could the allegation be considered gross misconduct? (View lists in disciplinary policy)

**7.** **Should precautionary action be considered?**

* For example no lone working, temporary redeployment, role restrictions (i.e. no clinical duties), no night shifts, no manual handling etc.
* Should exclusions be implemented

**FOR ALL OF THE ABOVE**

The Divisional People Business Partner is available to support and advise.

A decision at this point should conclude whether an investigation is warranted or whether other routes such as Conduct, Performance or Development Plans may be more appropriate.

**Appendix 3 – Conduct Action Plan**

**Name:**

**Manager:**

**Date of meeting to discuss the Conduct Action Plan:**

**Review meeting date(s):**A review meeting will be held to discuss your conduct in line with this Conduct Action Plan.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Objective** | **Expected level of behaviours /Success criteria** | **Support to achieve objectives** | **Required evidence of achievement** | **Timescale for improvement** | **Review dates and comments** |
|  |  |  |  |  |  |
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|  |  |  |  |  |  |

Failure to improve your conduct in accordance with this Conduct Action Plan will result in further action in accordance with the Trust’s Disciplinary Policy and Procedure

**Signature: Date:**

(Member of staff)

**Signature: Date:**

(Manager)

**Manager to provide a copy of the meeting record to the member of staff and to securely retain the original.**

**Appendix 4 - Draft letter informing an employee they are subject of an investigation**

|  |  |
| --- | --- |
| (Addressee name  Address  Postcode) | Your Department  **Salisbury District Hospital**  Salisbury  Wiltshire  SP2 8BJ  Telephone (01722) 336262 Ext. xxxx  Fax (01722) xxxxx |

Xx month, 2021

Dear

I am writing to inform you that the Trust has decided it is necessary to conduct an investigation into your actions in relation to:

* [Summarise details of each issue being investigated in bullet points]

The basis of the investigation is also outlined in the enclosed Terms of Reference. Please ensure that you read it and let me have any comments that you would like me to consider by [date].

Only if appropriate i.e. when the case is a “he said, she said” scenario - You are required to provide an initial statement regarding your recollection of the events surrounding the above allegations. Please can I ask you to complete the enclosed template (template 5) and return it to me within 48 hours. (Insert address)

The person conducting the investigation will be [name of investigating officer].

The aim of the investigation is to establish the facts of the matter by gathering as much relevant information as possible. It is currently expected that the investigation will be completed by [day, month].

Once the investigation has been completed, you will be informed in writing of its outcome. If it is found that there is a case to answer, you will be invited to attend a formal disciplinary hearing.

The Investigating Officer may invite you to attend an investigation meeting where you can explain your version of events. If this is required, you will be informed of the time and date of the meeting in advance.

In the meantime, should you have any information that might be of assistance to the investigation or wish to discuss anything, please do not hesitate to contact [name of investigating officer/line manager/OD&P Business Partner].Their contact details are [telephone number, email address].

To ensure that the investigation can be conducted as fairly as possible we request that you keep the matter confidential. Any breach of confidentiality may be considered to be a disciplinary matter.

Please note that you should continue to attend work while the investigation takes place [amend if excluded or under the restriction set out to you in my previous letter].

I have assigned a point of contact (insert name) who can also be contacted on (number) for further support during the investigation.

Yours sincerely

Name of Case Manager

Job Title

Enc: Terms of Reference

Initial statement template

**Appendix 5 – Terms of Reference Document**

**PRIVATE & CONFIDENTIAL**

|  |
| --- |
| **TERMS OF REFERENCE**  **Allegation Against:** (insert name of individual under investigation)  **Date:** (insert date TOR finalised) |

\***PLEASE NOTE** - all information highlighted in red needs to be removed or inserted prior to finalising

|  |  |  |
| --- | --- | --- |
| **Case Manager:** | **Name** | **Job Title** |
| **Investigating Officer:** | **Name** | **Job Title** |
| **OD&P support for the investigation:** | **Name** | **Job Title** |
| **Trade Union Representative / Work Colleague:** | **Name** | **Job Title** |

**TERMS OF REFERENCE**

**PURPOSE OF INVESTIGATION**

This investigation is commissioned to investigate the allegation(s) / formal complaint raised by [name], [job title], under the Trust’s [insert policy name e.g. Disciplinary, Grievance or Bullying & Harassment].

The investigation will be conducted by [insert name of Investigating Officer, and job title].

OD and People support will be provided by [name of HR support person], in accordance with Salisbury NHS Foundation Trust’s Workforce Investigation Policy and its associated Procedure.

On completion of the investigation, a report will be compiled documenting the findings and conclusions.

The report will be submitted to the Case Manager who will then have the final decision as to whether the case should proceed to a formal hearing.

**ALLEGATIONS/COMPLAINT**

The allegation(s)/formal complaint to be investigated is/are as follows:-

[List the specific allegation(s) including dates, times and locations being made against the individual and ensure this is then mirrored on all further documents sent in relation to this case.]

For example:

1. That on the [insert date] [x staff member] failed to transfer a patient in line with the Trust’s Moving & Handling Policy & Procedure.

**SCOPE OF INVESTIGATION**

The Investigation will seek to explore whether there is evidence to substantiate the allegation/s made against you. As such the Investigating Officer has been requested to consider the following:

[List all elements you are asking the Investigating Officer to explore as part of their investigation and detail within their report.]

For example:

1. To ascertain whether [x staff member] was in date with all statutory and mandatory training requirements.
2. To establish whether there were any witnesses to the incident reported to have taken place on [x date].
3. To establish the sequence of events that took place on [x date] and the patient care delivered by [x staff member].

The Investigating Officer will consider any relevant issues that emerge as part of the investigation process.

The Investigating Officer must ensure regular communication and updates are provided to relevant parties.

Meetings will be held with other staff where it is considered they will be able to provide information relevant to the investigation.

All parties will be advised of their right to be accompanied by a Trade Union Representative or workplace colleague unconnected to the complaint / allegation.

All parties will be reminded of the strict requirement for confidentiality regarding the investigation and will be advised that any breach of confidentiality may be dealt with under the Trust’s Disciplinary Policy.

**PROPOSED TIMETABLE FOR COMPLETION OF THE INVESTIGATION**

It is not possible to be prescriptive about the time it will take to complete this investigation however; internal investigations would normally aim to be completed within a maximum of ten (10) weeks from agreement of this Terms of Reference document. This will be dependent on the complexity of the case.

If this 10 week timeframe is not feasibly, the Investigating Officer will inform all parties of the likely completion date for this investigation.

In agreement with the Case Manager and Investigating Officer, the proposed target date for completion is [enter date – please take into consideration any known periods of unavailability].

**RESOURCES**

The Investigating Officer will have support from the Case Manager and the Divisional People Business Partner throughout the investigation. If possible, the Investigating Officer will obtain administrative support from [insert the name of the admin support identified]. Those providing administrative support will be advised of the need to maintain confidentiality at all times.

It is appreciated that this may be a difficult time for you. Please contact your named support person should you require any additional help, guidance or support.

**DOCUMENTS**

The documents that are recommended to be reviewed by the Investigating Officer are as follows, however please note this list is not exhaustive and the Investigating Officer has the authority to review all other documents considered to be relevant:

Examples may include Datix reports, statements from staff members, patient complaint details, duty rota, training records, individuals job description etc.

Insert document names

**POTENTIAL WITNESSES**

The names of all potential witnesses are listed below; however please note that others may be identified and interviewed during the course of the investigation:

* Insert witness names – including job title and department and any restrictions on availability e.g. leaving the Trust in 4 weeks etc.

**DELIVERABLE**

A report, supplemented by evidence, will be drafted and presented to the Case Manager who has authorised the investigation.

**Appendix 6 - Draft letter informing an employee they are subject of an investigation**

|  |  |
| --- | --- |
| (Addressee name  Address  Postcode) | Your Department  **Salisbury District Hospital**  Salisbury  Wiltshire  SP2 8BJ  Telephone (01722) 336262 Ext. xxxx  Fax (01722) xxxxx |

Xx month, 2021

Dear

I am writing to inform you that the Trust has decided it is necessary to conduct an investigation into your actions in relation to:

* [Summarise details of each issue being investigated in bullet points]

The basis of the investigation is also outlined in the enclosed Terms of Reference. Please ensure that you read it and let me have any comments that you would like me to consider by [date].

Only if appropriate i.e. when the case is a “he said, she said” scenario - You are required to provide an initial statement regarding your recollection of the events surrounding the above allegations. Please can I ask you to complete the enclosed template (template 5) and return it to me within 48 hours. (Insert address)

The person conducting the investigation will be [name of investigating officer].

The aim of the investigation is to establish the facts of the matter by gathering as much relevant information as possible. It is currently expected that the investigation will be completed by [day, month].

Once the investigation has been completed, you will be informed in writing of its outcome. If it is found that there is a case to answer, you will be invited to attend a formal disciplinary hearing.

The Investigating Officer may invite you to attend an investigation meeting where you can explain your version of events. If this is required, you will be informed of the time and date of the meeting in advance.

In the meantime, should you have any information that might be of assistance to the investigation or wish to discuss anything, please do not hesitate to contact [name of investigating officer/line manager/OD&P Business Partner].Their contact details are [telephone number, email address].

To ensure that the investigation can be conducted as fairly as possible we request that you keep the matter confidential. Any breach of confidentiality may be considered to be a disciplinary matter.

Please note that you should continue to attend work while the investigation takes place [amend if excluded or under the restriction set out to you in my previous letter].

I have assigned a point of contact (insert name) who can also be contacted on (number) for further support during the investigation.

Yours sincerely

Name of Case Manager

Job Title

Enc: Terms of Reference

Initial statement template

**Appendix 7**

**Interview Statement for Workforce Investigation**

Date and Location: [Enter Information]

Start Time: [Enter Information]

Finish Time: [Enter Information]

Details of any Adjournments: [Enter Information]

In attendance at the meeting today is: [Enter Information]

To ensure that the investigation can be conducted as fairly as possible we request that you keep this matter, and anything discussed at the meeting, confidential.

Any breach of confidentiality may be considered as disciplinary matter.

This is a process of conducting an investigation into:

[Detail allegations/incident under investigation]

Trust Headquarters, Sterne 7, Sterne Road, Tatchbury Mount, Calmore, Southampton SO40 2RZ

The meeting is to establish the facts of the matter, including:

* What you witnessed
* The sequence of events
* Who was involved and who witnessed the issue/events;
* Any documented evidence or any other information that you feel might be useful.

**This meeting is not a disciplinary hearing.**

Your union representative or the work colleague supporting you today is not able to answer questions on your behalf.

*Please be advised, where the evidence from this investigation suggests there is a case to be heard and that case goes to a formal process, your statement may be shared and used as specified in the Trusts Disciplinary Policy.*

Trust Headquarters, Sterne 7, Sterne Road, Tatchbury Mount, Calmore, Southampton SO40 2RZ

|  |
| --- |
| Question / Statement:  *Please continue overleaf;* |

|  |
| --- |
| *Please continue overleaf;* |

I agree this statement is an accurate account and understand that should the matter progress to a disciplinary hearing my statementwill be shared and used as specified in the Trusts Disciplinary Policy.

Signed: Date:

|  |
| --- |
| Question / Statement |

**Appendix 8 - Draft Letter requesting employee/witness to agree statement**

|  |  |
| --- | --- |
| (Addressee name  Address  Postcode) | Your Department  Salisbury District Hospital  Salisbury  Wiltshire  SP2 8BJ  Telephone (01722) 336262 Ext. xxxx  Fax (01722) xxxxx |

Xx month, 2021

Dear

Thank you for attending the investigation meeting held on [Insert Date].

Please find enclosed two copies of the notes taken at this meeting, which should represent a fair and accurate account of our discussions.

I would be grateful if you check the details, amend if necessary, and sign one copy to indicate your acceptance of the information. Please can you return this signed copy to me by [date]. The second copy is for your records.

[Include when sent at second chase - If a signed copy of these notes has not been received from you by the above date then the notes will be accepted as correct and will be submitted with the report unsigned].

If you have any queries regarding this matter or feel unable to sign the notes, please contact me on [Insert Number]

Yours sincerely

Name of Investigating Officer

Job Title

Enc.

2 copies of statement notes

Appendix 9

**Tips & Techniques – Workforce Investigation Interviews**

Developing interview techniques through training and experience is vital for an Investigating Officer. While there is no substitute for this, the following tips and techniques have been designed to refresh the Investigating Officer’s knowledge, skills and approaches.

**Listening**

This is the vital part of conducting an investigation interview. Effective listening will help the Investigating Officer get a better understanding of the people they interview and their points of view. Typical actions that the Investigating Officer should follow include.

* Having a list of pre-planned questions to follow and tick off.
* Remaining focused on the witness and the reasons for the meeting.
* Concentrating on exactly what the witness is saying.
* Being open minded to anything the witness may say.
* Acknowledgement of the witness’ viewpoint.
* Listening for points that the witness avoids covering or giving details on.
* Allowing the witness to finish their point before moving the interview on, or asking a further question.
* Using silence to encourage the elaborate to elaborate on points.

**Body Language**

An Investigating Officer should think about their body language and consider how their actions may be perceived. Typical actions that can help to reassure the witness that the meeting will be conducted in a fair, professional and impartial manner include:

* Facing the witness with a relaxed body posture.
* Remaining calm.
* Not folding arms – this can give a ‘closed’ impression
* Providing the appropriate amount of eye contact
* Providing appropriate affirmative facial expressions and gestures, such as nodding.

The Investigating Officer should be careful to avoid making judgements based on the witnesses’ body language. Where there is some discomfort or unease, an Investigating Officer could ask, in a sensitive way, why the witness is acting in a particular way, remembering that an interview of this sort can be very stressful.

**Unconscious bias**

Unconscious bias occurs when people favour others who look like them and/or share their values. For example a person may be drawn to someone with a similar educational background, from the same area, or who is the same colour or ethnicity as them.

Another form of unconscious bias is known as the halo effect. This is where a positive trait is transferred onto a person without anything really being known about that person. For example those who dress conservatively are often seen as more capable in an office environment, based purely on their attire.

Everyone has unconscious biases. The brain receives information all the time from our own experiences and what we read, hear or see in the media and from others. The brain uses shortcuts to speed up decision making and unconscious bias is a by-product. However, it can be mitigated.

### How to overcome unconscious bias

* Be aware of unconscious bias.
* Don't rush decisions rather take your time and consider issues properly.
* Justify decisions by evidence and record the reasons for your decisions.

**Appendix 10**

**PRIVATE & CONFIDENTIAL**

|  |
| --- |
| **WORKFORCE INVESTIGATION REPORT**  **[Subject of Investigation]**  **Date of Report: [Enter Information]** |

|  |  |  |
| --- | --- | --- |
| **Investigating Officer/Author:** | **Insert Name** | **Insert Job Title** |
| **Case Manager:** | **Insert Name** | **Insert Job Title** |
| **OD&P Support for the investigation:** | **Insert Name** | **Insert Job Title** |
| **Trade Union Representative/ Work Colleague:** | **Insert Name** | **Insert Job Title** |

**Contents**

The report should begin with a clearly numbered list of contents. This should include each section of the report and also a list of appendices.

E.g.

1. Introduction
2. Terms of Reference
3. Witness List
4. Exclusion
5. Sequence of Events
6. Methodology
7. Findings
8. Investigation Conclusion
9. Appendices

List of Appendices:

1. Copy of Terms of Reference
2. Interview notes from Meeting with XXXX DATE
3. Interview notes from Meeting with XXX DATE

## 1) Introduction

In this section please explain why the investigation was requested and a brief overview to the case.

State who has commissioned the investigation and their role within Salisbury NHS Foundation Trust (SFT) and the date the Investigation began. e.g. Name and Job Title, commissioning the investigation. The Workforce Policy and Procedure provides the framework for this investigation which began on the xxxxxxx

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

List the Trust Policies that are relevant to the investigation: e.g. Disciplinary, Bullying & Harassment, Grievance ect.

State the Investigating Officer and their role within SFT e.g. This investigation was carried out by Name, Job Title, under Salisbury NHS Foundation Trust’s Workforce Investigating Policy and Procedure.

State the OD&P support and their role e.g. OD&P support was provided by Name, Job Title in accordance with Salisbury NHS Foundation Trust’s Workforce Investigation Policy and Procedure

State the Administration support and their role within this investigation if applicable

## 2) Allegation / Terms of Reference [Include if they were amended, how and why including the date if applicable]

The Terms of Reference (TOR) should be used to state the specific allegation(s) being investigated. The allegation(s) will be clearly highlighted within the TOR document (template 2) and will have formed the basis of the investigation. The scope of the TOR should also be copied and added here:

e.g.

a) “Alleged that during the period 1st April 2012 to 30th July 2012, Mr X attended late for work on 16 separate occasions”.

b) “Alleged that Mr X was absent from work without permission or proper authority on 4th, 5th and 6th July 2012”.

c) “Alleged that on 4th July 2008, Mr X was verbally abusive/used explicit foul language to his line manager, Mrs Smith”.

Summary documents used within the investigation and attached as an appendix can be referenced to clarify the context and content of the report.

**3) List of those referenced in this report**

Present a list, in table form, summarizing all individuals involved in the investigation, this should include names, initials and job titles. For example:

|  |  |  |
| --- | --- | --- |
| **Name** | **Initials** | **Job Title** |
| John Smith | JS | Community Staff Nurse |
| Ann Brown | AB | Community Matron |

## 4) Exclusion or Restriction of Practice (where appropriate)

**Specify summary details;**

e.g. for exclusion:

“NAME was excluded from work on insert date pending a full investigation in to the alleged incident on DATE by NAME. The letter confirming the exclusion is attached at Annex A”.

“Subsequent formal review meetings took place on DATE and DATE by NAME to ensure ‘Exclusion’ was still the most appropriate measure while the investigation continued. The letters confirming the detail of the ‘Exclusion’ are attached in Annex B”.

e.g. for Restriction of Practice:

“NAME was placed on Restriction of Practice on insert date pending a full investigation in to the alleged incident on DATE by NAME. The letter confirming the detail of Restriction of Practice is attached in Annex A”.

“Subsequent formal review meetings took place on DATE and DATE by NAME to ensure ‘Restriction of Practice’ was still the most appropriate measure while the investigation continued. The letters confirming the detail of ‘Restriction of Practice’ are attached in Annex B”.

## 5) Chronology of Events

Key dates and actions should be listed here, including but not limited to; date TOR provided to employee, dates of interviews, report completion date etc.

|  |  |
| --- | --- |
| **Date** | **Event** |
|  |  |
|  |  |
|  |  |
|  |  |

## 6) Methodology

The below statements should be used as a guide to the development of the report methodology -

**Explain the approach taken to complete the investigation.**

**Persons interviewed and the sequence of interviews.**

**Persons not interviewed and the reasons why they were not interview.**

**List all the evidence collected.**

**List all the evidence that could not be collected and why.**

**Any other documentation that has been reviewed.**

## 7) Findings

This section will contain the most important information within the report and should detail a summary of the cases key facts and findings.

To maintain relevance and objectivity, this section should be presented to align with the Terms of Reference i.e. presenting the findings relating specifically to that Term of Reference and then the logical conclusion that has been reached through investigation and capture of evidence.

For Example:

Term of Reference:

a) “Alleged that during the period 1st April 2012 to 30th July 2012, Mr X attended late for work on 16 separate occasions”.

**Summarise the member of staff’s account and the evidence gathered through interviewing witnesses** and the collection of physical evidence. Make reference to the notes of the interview/witness statements in the appendices and set out how the evidence supports or does not support the allegation. You should also refer back to the scope of the investigation from the Terms of Reference.

You can detail your findings under the below headings for each allegation if helpful.

**Summary of written and physical evidence** [name and summarise each document contained, set out how the evidence supported or did not support your findings, but also why?]

**Summary of witness evidence** [name and summarise each witness statement, quote from statement where relevant, set out how the witness statements support or did not support your findings.

**Facts established** [details what the investigation has established]

**Mitigating factors** [detail if there are any mitigating factors uncovered that are relevant to the investigation]

**Other relevant information** [detail any other information that is relevant to the matter]

Direct quotations from interview notes and statements can be used within this section to evidence the findings. Note – please reference the appropriate appendices.

Depending on the circumstances of the case it may be necessary to provide background information in relation to previous informal management review(s) and to summarise how expectations/standards have been set, explained and reinforced. You should also detail 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 Trust Procedure) on the individual’s file.

If there is inconsistent evidence presented from a number of sources this should be highlighted.

It is important to separate fact from comment and personal perceptions. The objective is to draw a logical conclusion from the presented evidence. It may be appropriate to refer to extracts from relevant Trust policy.

**Conclusion**

In relation to each Term of Reference, draw a logical conclusion based upon the evidence presented which will either support/corroborate or not support/contradict the allegation.

## 8) Overall Investigation Conclusion

This section should contain a summary statement of the report specifically detailing whether the allegation/s has / have been substantiated or not.

This section should be a very brief summary of your rationale for determining a genuine belief that there is evidence to either confirm or refute that there is a 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 not responsible for recommending any form of sanction. If appropriate, this will be determined by the Chair of the formal hearing.

## Appendices

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

**Be clear on cross references between statements and evidence.**