



## Undertaking Workplace Investigations Guidance Procedure

<b>Date Published</b>	<b>June 2016</b>
<b>Version</b>	<b>1</b>
<b>Last Approved Date</b>	<b>1<sup>st</sup> May 2019</b>
<b>Review Cycle</b>	<b>3 Years</b>
<b>Review Date</b>	<b>May 2022</b>

“Learning together; to be the best we can be”

# 1. Planning the investigation

## 1.1. Why is planning important?

- 1.1.1. Conducting an investigation can be a complex and challenging experience. However, ensuring that you have a focused and planned approach can help your investigation be successful.
- 1.1.2. Before you start an investigation, it is important to initially make some basic checks about the circumstances around the alleged incident. For example, it may be necessary to check whether the individual was at work at the time of the alleged incident, or whether they had been given specific permission to act in the way that they did. If after having made some initial checks, you have decided that an investigation is warranted you will then need to address some basic issues. You will need to decide how you are going to go about carrying out the investigation, what you need to focus on, who will be involved, who needs to be interviewed and what information and resources you require.
- 1.1.3. Planning is critical to an effective and successful investigation. Ensuring a well-planned approach will help you avoid any unforeseen distractions and keep you focused on the aims of the investigation and concentrate on what is important.
- 1.1.4. This guidance is intended to help you consider key issues which will help you focus your investigation. This guidance should be read in conjunction with the guidance template investigation plan and the gathering information section of this document

## 1.2. Defining the complaint, allegation or incident

- 1.2.1. Defining the complaint(s), allegation(s) or incident(s) will help you focus your investigation on what it is you are trying to establish. It may be appropriate therefore to clarify any issues or facts with the complainant to help you. Any lack of clarity about the exact nature of the allegation could result in problems arising later on. Examples of allegations may include:

- Violence or aggression shown towards another employee
- Bullying and/or harassment
- Theft of school property
- Misuse of Communications equipment e.g. email/internet
- Falsifying documentation such as expenses.

### 1.3. Identifying the breach of Trust Policy

1.3.1. One of the main pitfalls with any investigation is getting side-tracked into issues which are not relevant. This can delay the progress of the investigation and be costly in terms of time and effort.

1.3.2. In order to ensure that you focus your investigation in the right areas, it is useful to identify what potential breaches of Trust Policy have occurred in relation to the allegation(s).

1.3.3. Some allegations may breach more than one policy. Where the potential breach of policy is not obvious or clear, advice should be sought from the Trust Human Resources Advisor.

1.3.4. Some examples of possible breaches of policy may include:

<b>Allegation</b>	<b>Breach of Policy</b>
Using derogatory or informal slang about people's characteristics, e.g. their disability, race, religion, sexual preference, physical appearance, gender, etc.	Dignity at work policy/code of conduct
Inappropriate email/internet misuse	Electronic Communications Policy
Falsifying petty cash records	Code of conduct
Unauthorised and deliberate disclosure of confidential information	Data Protection Policy

## **1.4. Documentary evidence**

**1.4.1.** It is important to give consideration to what information or evidence you may need to establish whether the alleged misconduct occurred. Your first step in identifying what information you need could be from your initial interview with the complainant. The complainant may provide you with some documentary information, from which you may be able to identify what further information is required.

**1.4.2.** There may be a need to gather additional information not planned for at the outset of the investigation, however, being clear and focused about what information you need at the start will help you avoid getting side tracked and gathering information which is irrelevant.

**1.4.3.** You may find it useful to make a list of the documentation you have at the start of the investigation and the information you need to acquire going forward.

## **1.5. Action plan**

**1.5.1.** Having considered the issues above, attention now needs to be given to identifying how you are going to conduct the investigation. Consideration could be given to:

- What information do you need?
- How are you going to get the information?
- Where are you going to get the information?
- Who are you going to interview?
- In what order are you going to interview?
- What relevant evidence are you trying to ascertain from the interviewees?
- When and where are you going to interview them?
- Who is going to support you in the interviews and take notes?
- Do you need support from higher management in other areas to conduct your investigation?

## 1.6. Resources and timescales

1.6.1. Now that you have decided on your investigation plan, you may want to consider the resources you need to implement it and the targets or milestones you intend to achieve.

1.6.2. It may be helpful to make a list on the plan including:

### Timescales for:

- Gathering key documents/information
- Notifying those you want to interview
- Completion of interviews
- Collation of witness statements
- Production of draft report
- Final report

### Resources

- Time
- Staff i.e. who will help you take notes/record interviews
- Specialist advice or guidance e.g. child protection
- Support from other school staff or HR

It is important before commencing your investigation that you ensure these resources are available to you to avoid delays in the investigation.

## 1.7. Responsibilities of stakeholders

1.7.1. **Commissioning leader** – It is the responsibility of the commissioning leader (CEO, Headteacher etc.) to ensure that an investigation takes place, in a timely manner, and ultimately decide whether a formal disciplinary hearing is warranted. The commissioning leader is therefore tasked with asking the investigating officer to carry out the initial investigation and to produce an investigation report.

1.7.2. **Investigating Officer** - It is the responsibility of the investigating officer to initiate progress and lead the investigation.

**1.7.3. Nexus MAT HR Advisor** - The Trust's HR Advisor is available to advise leaders on conducting investigations where requested. In complex investigations, it may be appropriate for the responsible senior leader to request the support of a member of the team on the investigating panel.

## 2. Gathering evidence

**2.1.** This section gives further details about how to gather the evidence that has been identified in the plan.

### **2.2. Types of evidence**

#### **2.2.1. Employee monitoring records**

- In certain circumstances it may be considered necessary to monitor an employee as part of an investigation. One example of such monitoring is keeping records on an employees' timekeeping. Another form of employee monitoring is reviewing an individuals' IT records in the case of suspected IT misuse;
- Where the use of IT, audio or video surveillance is contemplated the advice of the Trust's HR Advisor **must** be sought. The level of employee monitoring that is carried out should be proportionate and reflective of the seriousness of the alleged offence;
- A record of how the employee has been monitored and the results of this monitoring, including any documentary evidence, must be added to the investigatory report.
- Monitoring should be carried out in line with the Trust's Data Protection Policy.

#### **2.2.2. Interview notes**

- It is recommended, at a minimum, that employees who are subject to investigation are always interviewed face to face and that a written record of this interview is produced by the investigating officer.
- Interview notes need to be produced following every type of interview (see below for more guidance on the different types of interview).

### 2.2.3. Written statements

- Statements are produced by the witness or the employee subject to the investigation and should be a written account of the facts in respect of the event(s) being investigated.
- There is no statutory regulation governing the manner in which the statements are taken. The statement is simply a written record of an individuals' perception of events relevant to the allegation.
- The statements **must** be signed and dated by whoever produced them.

### 2.2.4. Other types of evidence

- There are many potential sources of information depending on the nature of the allegation.
- In some cases it may be necessary to obtain photographic evidence, e.g. damage, faulty work etc.
- Further guidance on the different types of evidence that may need to be collected and the manner in which to do this can be obtained from you're the Trust's HR Advisor.

## 2.3. Interviews

**2.3.1. Face to face interviews** - Face to face interviews are the only way to observe a person's range of reactions to your questions – therefore in normal circumstances, and for key pieces of evidence a face to face interview is the preferred method of clarifying information. They may be the best option when they involve little or no travel for you and the interviewee.

### 2.3.2. Telephone interviews

- Telephone interviews whilst not the preferred method, can be a speedy and effective way of obtaining information from witnesses where there are no communication requirements (such as having to use translation services, sign language or the use of a hearing loop). However, in certain circumstances telephone interviews may be ideal

— for example, where the complaint is straightforward or you only need to check simple facts. Telephone interviews should not be used for the person(s) who are subject to the investigation.

- Telephone interviews are not appropriate if an individual wishes to have the opportunity to have a Trade Union representative or colleague present to support them.
- For telephone interviews, people may be happy to talk when you first call, but you should realise that it might not be convenient or they may need time to prepare. Always check with the interviewee first, and where appropriate agree a convenient time to call them back. Ensure you keep the appointment as punctually as you would a face to face interview.

### **2.3.3. Order in which to interview**

- You will need to decide in which order to interview those involved in the incident.
- Interviewing the employee who is the subject of the investigation first may save you a lot of time if, for example, they admit to the alleged offence. It may also help you establish which facts, if any, are disputed.
- Although witnesses should be interviewed individually, it may be appropriate to ensure that these individuals are interviewed immediately after each other. This can prevent interviewees from discussing what was said during the interviews and changing their stories.
- Be prepared to re-interview the employee concerned - you may learn things from your investigation that you need to discuss with the subject employee, requiring a further interview.
- In order to help manage the subject employee's expectations, you could explain at the start of the first interview that there may be a need for further interviews.

### **2.3.4. Guidance on face-to-face interviews**

- You should agree a time, date and venue for the interview in advance, and where possible confirm these details in writing.
- You should interview employees individually and not as a group.



- Interviews should be held in a private location, away from day to day school disturbances and distractions.
- If you are interviewing a child, or a vulnerable adult you will need to make special provisions, such as ensuring that there is an appropriate adult present to observe the process. Separate advice **must** be sought if you are planning on carrying out an interview of this kind.
- Ensure that the interview is adequately recorded - it is recommended that you arrange for another member of leadership to attend in order to support you in taking detailed notes and conduct the interview.
- You may find it helpful to prepare an interview plan with either specific questions or general topics to be explored.
- Consider what documents, if any, should be made available to the interviewee in advance of the interview.
- It is important to recognise that the interview is being held to establish, not judge the facts: facts should be sought not opinions.
- Never pre-judge the outcome of the interview before hearing the employee's perspective.

#### 2.3.5. Right to be accompanied

- The Trust considers it to be good practice to allow every employee who is subject to any form of interview to have the right to be accompanied by a Trade Union representative or colleague.
- The Trade Union representative or colleague is there to support the employee not to be the person who answers the questions instead of the employee.
- If an employee elects for a colleague to accompany them it is important to ensure that they are not connected with the investigation in any way.

### 2.4. The interview

#### 2.4.1. Start of the interview

- Introduce those present, explain the reasons for the interview and confirm the rights to representation, and the representatives' role.
- Explain the context of the interview and that you need to find out what has happened.
- Explain confidentiality as it will apply for the interview.
- Confirm that notes will need to be taken.

- Outline how long the interview is likely to take.

#### 2.4.2. **Where the individual is a witness:**

- Interviewees must be told that their evidence could be used if any formal action is taken, also that they may be called to give evidence in any formal procedure. This may include any internal appeal hearings and Employment Tribunals.
- Explain that you need to find out what *they* know and saw – if they say they have heard things from other people, explain that you will need to speak to that person to find out what they know and saw.

#### 2.4.3. **Where the individual is the employee being investigated:**

- Where they admit the offence, establish if there are any mitigating circumstances that caused the individual to behave as they did.
- Ask employees to explain their understanding of the relevant procedures / standards and their purposes.

#### 2.4.4. **During the course of the interview**, be aware of the benefits of both open and closed questions:

- **Open-ended questions**, such as who, what, where, how and why, encourage people to talk, provide information in a broader context, and expand on the subject. This is very helpful in obtaining information and assessing credibility.
- **Closed questions**, which can only be answered 'yes' or 'no', should be used sparingly. They are good for confirming information, and getting precise answers from subjects who are seeking to distract you with details or failing to focus on what you want to know.
- Stay calm and professional throughout the process.
- Regularly check your understanding of the situation.
- Establish the facts.
- Help the interviewee feel at ease.
- Use appropriate language.
- Avoid making judgemental statements or moralising.
- Be ready for resistance, embarrassment, defensiveness, even hostility.
- Be flexible and follow up on what is said and ask specific questions relating to what you are told.

- Don't encourage excuses (you may be manipulated)
- Don't interrupt their account, listen to them speak.
- Allow for pauses – they may not have finished speaking, they may be summing up the courage to disclose some important issues.

#### 2.4.5. Recording the interview

- There should be a written account of what was said at the meeting. The notes should be based on fact and not reflect the opinions of the person writing up the notes.
- It may be useful to add comments about non-verbal actions. For example, "the employee, continually failed to make eye contact when answering questions about..." or "the employee became aggressive when talking about X and started banging their fists against the table...".
- Interview notes should, at a minimum, be signed by the investigating officer, signifying that they are a true reflection of what was said at the meeting. It is at the investigating officer's discretion to decide whether or not they wish the individual who has been interviewed to additionally sign the notes.
- If the investigating officer wishes the person being interviewed to sign the notes, they should send them a copy by email or in hard copy and ask the employee to confirm that they are a true reflection of the interview, or if they wish to add separately any points that they disagree with / wish to add. These amendments should not be added to the notes themselves, but should be added to the investigation report.

#### 2.4.6. At the end of the interview

- Review the information that has been collected and allow time for you to decide whether any further questions are needed.
- Allow the interviewee an opportunity to add anything that they feel has not been covered during the course of the interview.
- Confirm what will happen to the notes of the meeting and outline that the next stage will be for a senior manager to review the facts and decide if any further investigation is necessary.

## 3. Concluding the investigation

### 3.1.1. Timescale

- All effort should be made to conclude the investigation within a reasonable timescale. The length of time required to conduct an appropriate investigation will depend on factors such as: timescales or guidelines contained within policies that are related to the nature/type of the case; the complexity of the case; the number of witnesses to be seen; the range of other sources of evidence to be considered; and the availability of witnesses or other evidence.
- Some witnesses may need follow up interviews where there is a need to clarify or challenge contradictory evidence.
- When the investigating officer/panel is satisfied that the investigation has been reasonably completed (accepting that it is not always possible to conclude all matters that have been raised), then a report should be prepared

### 3.1.2. Investigation report

- 3.1.2.1. The investigation report is primarily a management document. It will be for the manager who commissioned the investigation, and who will receive the report, to determine whether all or part of the report will be used in any subsequent action under any of the Trust's procedures.
- 3.1.2.2. The Investigating Officer, when writing the report, should be aware of its possible future circulation and the language used within the document should therefore be formal and circumspect.
- 3.1.2.3. Should the commissioning manager conclude that further action is necessary, and a formal Disciplinary Hearing called, it would normally be expected that the Investigation Report (in full or part) would be sent to the employee(s) who is(are) the subject of the investigation.

3.1.3. The Investigation Report should be as brief as possible but would normally cover:

- Introduction
- Executive Summary (optional)
- Methodology
- Findings
- Potential Further Actions (optional)

### 3.2. Further actions

3.2.1. It would normally be expected that the Investigating Officer will form part of the school or Trust senior/executive leadership team that would present the management case at a formal hearing. *Alternatively, the Investigating Officer could be called as a witness to present some or all of the report.*

3.2.2. Investigating Officers should be sensitive to the needs of any witnesses who appear to be in distress and bring this to the attention of the Trust Leader who commissioned the investigation (to consider if/how any support can be offered).

## GUIDANCE TEMPLATE: INVESTIGATION PLAN

### Nexus Multi Academy Trust

<b>Investigation</b>	<i>Complaint/Allegation/Incident</i>
<b>Employee(s) being investigated</b>	
<b>Investigating Officers</b>	<i>Manager 1, Job Title / Manager 2, Job Title</i>
<b>Date notified of complaint/allegation/incident</b>	
<b>Target completion date</b>	

### Details of Complaint/Allegation/Incident

- *Example 1: Inappropriate email/internet use PLUS specific detail*
- *Example 2: Falsifying timesheet records PLUS specific detail*

### Breach of Trust Policy

- *Example 1: Electronic Communications Policy*
- *Example 2: Flexible Working Policy / Code of Conduct*

### Documentary Evidence

- *Example 2:*
- *Policy breached*
- *Witness statements from X*
- *Mileage record sheets*
- *Personal file to determine any related issues i.e. previous warnings*
- *Signing in/out records for period X*

### Action Plan

- *How are you going to obtain the information you need?*
- *What barriers are you going to experience in gathering your information?*
- *Where are you going to get the information from?*
- *Who are you going to interview?*

- *In what order are you going to interview?*
- *What relevant evidence are you trying to establish from the interviewees?*
- *When and where are you going to interview them?*
- *Who is going to support you in the interviews and take notes?*
- *Do you need any support from management or management in other Trust areas to conduct your investigation?*

### **Targets**

*Timescales for:*

- *Gathering key documents and information.*
- *Notifying those you want to interview of meeting dates.*
- *Completion of interviews.*
- *Collation of witness statements.*
- *Submitting a final report.*

### **Resources**

- *Time available.*
- *Availability of staff i.e. who will support you or take notes.*
- *Specialist advice or guidance required e.g. child protection.*
- *Support required from others*

## GUIDANCE TEMPLATE: INTERVIEW PLAN

### Nexus Multi Academy Trust

<b>Investigation:</b>	<i>Complaint/Allegation/Incident</i>
	<i>Employee(s) Investigated</i>
<b>Investigating Officers:</b>	<i>Manager 1, Job Title</i>
	<i>Manager 2, Job Title / HR support, Job Title</i>
<b>Questions</b>	
<p>The questions below are examples only and should be tailored to meet your own requirements. It is important to remember that investigatory interviews are not conducted in the same way as job interviews. You may wish to ask each interviewee different questions, in order to gather your evidence. It is also acceptable to ask additional unplanned and supplementary questions as the interview unfolds.</p> <ul style="list-style-type: none"> <li>▪ <i>Who was present (names/grades)?</i></li> <li>▪ <i>What happened/where?</i></li> <li>▪ <i>Was anything said by "x"?</i></li> <li>▪ <i>Did you say anything?</i></li> <li>▪ <i>Were there any other witnesses?</i></li> <li>▪ <i>When did you start to become concerned?</i></li> <li>▪ <i>What amounts were involved?</i></li> <li>▪ <i>Are there any relevant records/documents? (specify)</i></li> <li>▪ <i>How did you find out about this?</i></li> <li>▪ <i>How do you feel about things now?</i></li> <li>▪ <i>Are there any other matters of concern to you?</i></li> <li>▪ <i>Had concerns been raised previously?</i></li> <li>▪ <i>Are you aware of the regulations/ procedures to be followed?</i></li> </ul>	
<b>Date &amp; time of interview</b>	



## GUIDANCE TEMPLATE: CONFIDENTIAL REPORT

### Nexus Multi Academy Trust

<b>Investigation:</b>	<i>Complaint/Allegation/Incident</i>
	<i>Employee(s) Investigated</i>
<b>Investigating Officers:</b>	<i>Manager 1, Job Title</i>
	<i>Manager 2/HR support, Job Title</i>
<b>Introduction</b>	
<ul style="list-style-type: none"> <li>▪ <i>Include a summary of the complaint/allegation/incident;</i></li> <li>▪ <i>Identify the policy(ies) which may have been breached;</i></li> <li>▪ <i>Refer to any letter of complaint received and include it at Appendix A</i></li> <li>▪ <i>Names and details of those involved and any witnesses seen in the investigation, including Job Titles and roles in the organisation. (An organisation chart may be included if adds necessary clarity).</i></li> </ul>	
<b>Executive Summary</b>	
<ul style="list-style-type: none"> <li>▪ <i>This section would only be necessary if the investigation covered a major or complex issue and would include a brief summary of the Main Findings.</i></li> </ul>	
<b>Methodology</b>	
<ul style="list-style-type: none"> <li>▪ <i>Include a brief description of the method(s) used to gather information/evidence during the investigation</i></li> <li>▪ <i>It may be useful to include a timetable of events, starting from the date of alleged incident occurring or being reported, including who was interviewed and when.</i></li> <li>▪ <i>Highlight and explain any delays or anomalies within the investigatory process</i></li> </ul>	

## Findings

- *The Investigating Officer needs to consider the most appropriate way of setting out the findings, however experience shows that a presentation of facts in chronological order is often best as this enables a better understanding of the sequence of events.*
- *Set out the findings under each allegation, summarising witness statements which support or dispute the allegations.*
- *Include signed copies of Interview Notes or Witness Statements at Appendix B, along with any other documentary evidence.*
- *Include factual information only, highlight any discrepancies but do not form a judgement on the facts (this will be the role manager hearing any subsequent case).*
- *The report could identify where professional/work standards in respect of performance or conduct fall outside of those normally expected.*
- *Relevant information about the employee such as experience, skills, qualifications and training, employment history, and past/current disciplinary record should also be included.*

## Potential Further Actions

- *This section may be useful where actions can be recommended that are not directly related to whether or not disciplinary action should be taken.*
- *Actions could include additional training in particular areas, the re-issue of guidance to a specified group of employees, the development of additional policy guidance where ambiguity has been highlighted, changes to working practices, or reviews of school provision.*
- *In some cases it may be appropriate to highlight the need for further investigation on a wider basis, where the investigation shows that the issue is more widespread than originally thought.*

**Report Authors**

**Telephone Contact Details**

**Date of the Report**