

IMPERIAL COLLEGE LONDON

GUIDELINES FOR MANAGERS CONDUCTING INVESTIGATIONS

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1 Introduction

These guidelines have been written to assist Line Managers when carrying out investigations. It is expected that most workplace investigations could be carried out within this framework. The guidance contained within this document must be used in conjunction with the relevant College Policy or Procedure, as determined by the nature of the investigation.

Workplace investigations take many forms and may take place for many reasons. For example, an investigation may take place into performance issues where the member of staff is not sustaining the acceptable level of performance to meet the requirement of their role; or into a conduct issue where, for example, the member of staff is suspected of theft, dishonesty and/or other unethical practices; or unprofessional conduct (for example displaying inappropriate materials, fighting). An investigation may also be initiated where a member of staff raises a grievance, for example whether they feel that they have been unfairly or unreasonably treated, and/or where they have concerns relating to an incident of harassment, bullying or victimisation.

The College is committed to thoroughly investigating all allegations/complaints and ensuring that all members of staff are treated fairly, consistently and with dignity and respect throughout the investigation process.

The following is a list of the most common policies referred to during an investigation:

- Disciplinary and Poor Performance Policy
- Grievance Policy and Procedure (including harassment, bullying and victimisation)
- College Charter and Statutes 2007 covering academic staff (Discipline, Grievance and Dismissal Procedures for Academic Staff)
- Policy and Response Plan for the Treatment of Fraud, Corruption and Irregularities (investigation conducted under the direction of the College Secretary/Fraud Project Group)

The main parties involved in the investigation will be:

The Complainant – the member of staff raising the complaint or allegation that needs to be investigated

The Respondent – the accused member of staff / member of staff under investigation for conduct or performance issues

The Witness – a member of staff who has witnessed the event

2 Principles of an Investigation

An investigation is a fact-finding process to establish the relevant evidence and circumstances of the case. The investigation must only focus on the nature of the allegation, complaint or incident, and should be approached in a non-judgmental manner – guilt or innocence must not be assumed. The process may involve reviewing supporting records/documents as well as interviewing members of staff (i.e. the complainant, respondent and witness(es)) and preparing a comprehensive report. The investigation report will contain any relevant factual information, copies of witness statements and all other documentary evidence.

The time taken to investigate will vary depending on the complexity of the case. The Investigating Officer needs to ensure that the investigation has been sufficiently thorough to ensure that all the relevant facts have been established, so that they are able to draw conclusions in relation to the specific allegation(s) or complaint(s).

The Investigating Officer must also be aware of sensitivities around allegations of harassment and bullying, and consider possible equality strands such as race, sex or disability discrimination. The Investigating Officer needs to remain sensitive to these factors, even where they have not been raised directly as part of the allegations/complaint.

3 Informal Action

Not all workplace investigations require a formal comprehensive approach. Depending on the nature of the allegation/complaint, sometimes an informal and relatively short investigation provides all the information needed to reach a conclusion and resolution. Where allegations or concerns have been raised in relation to an individual's conduct or performance, or where a grievance has been raised, in the first instance, and where appropriate, line managers and members of staff are encouraged to discuss and seek to address the concerns/complaints via informal routes.

3.1 Informal action: Misconduct:

Where there are concerns about a member of staff's conduct (with the exception of alleged serious or gross misconduct), reasonable attempts will be made to resolve any problems through one-to-one discussion. For example, the line manager should speak to the member of staff to establish the immediate facts of the case from the member of staff's perspective; seeking relevant information such as **who** was involved, and **what, when, where** and **how** the incident happened.

If, during the course of an informal meeting, or following a number of informal meetings, there is no improvement in the individual's conduct, consideration will be given to taking further formal action, and a formal investigation may be initiated.

3.2 Informal action: Performance issues:

The performance standards against which a member of staff will be assessed will be communicated by the line manager.

Where there are concerns in relation to an individual's performance, the line manager should meet with the member of staff on an informal, one-to-one basis and agree objectives to address the areas of concern, together with any support or training to assist the individual in reaching these objectives.

Areas the line manager may consider when setting appropriate objectives include:

- What is the normal standard of performance expected of the member of staff, and any other staff carrying out the same role? For example: are they reasonable attainable targets? Have they been discussed and agreed as part of the individual's annual PRDP?
- Is there adequate evidence that the member of staff knows the standards which they should achieve?
- What documentation is there to support evidence of poor performance?
- What, if any, steps have already been taken to address the problem and remedy the situation? (e.g. check records of informal meetings etc...)
- Is re-training appropriate?

The member of staff should be given reasonable time to improve, and the review period should be agreed with the member of staff at the initial meeting. Progress should be reviewed regularly, and feedback given to the member of staff.

If, during the course of an informal meeting, or following a number of informal meetings, there is no improvement in the individual's performance following the informal measures, consideration will be given to initiating a formal investigation.

3.3 Informal action: Grievances:

Members of staff are encouraged, in the first instance, to discuss any concerns or complaints with their immediate line manager to seek a resolution. If a member of staff does not feel able

to discuss the problem with their first line manager, the member of staff can raise the grievance informally in writing to their HR Manager who will liaise with the member of staff to establish how they wish to proceed (i.e. informally or formally).

Any grievance raised informally will be given full and proper consideration. The College will provide support to facilitate mutually acceptable solutions to genuine concerns raised by members of staff.

Informal steps to resolve a grievance may include, for example:

- Meeting between the individual and their line manager to discuss the concerns, and identify potential solutions.
- Mediation between the members of staff concerned (see section 4 below).
- Where the grievance relates to allegations of harassment, bullying or victimisation:
 - (where the member of staff feels able to approach the member of staff directly) the individual meets with the alleged harasser and makes it clear that their behaviour is unacceptable and should stop;
 - the member of staff writes to the person who is causing the offence, and explaining that their conduct is unwelcome, offensive and should stop.

While attempting to resolve a grievance informally, a record of any discussions and copies of any correspondence should be kept by the member of staff, in the event that follow-up action becomes necessary. However, where mediation between the parties takes place as part of informal action to resolve a grievance, the details of the mediation process will remain confidential, and the details of mediation will not be considered as part of any subsequent formal investigation.

While the College encourages individuals to seek informal resolution to their grievances in the first instance, it is important that the member of staff decides how they wish to proceed. They may choose to start at either the informal or formal stage of the Grievance Procedure. In addition, if a member of staff has not been able to resolve their grievance via the informal route, they may request a formal review of their grievance by a senior manager.

4 Mediation

Mediation is a process for resolving disagreements in which an impartial third party (the mediator) helps two or more members of staff who are in dispute work towards a mutually acceptable resolution. The process increases the choices available to individuals in dispute, and the College supports the use of mediation to address conflicts at work.

For mediation to be effective, it is vital that members of staff trust the process, and feel free to talk in confidence. The process is entirely voluntary, and will only be undertaken if both/all parties are willing to go through the process. In addition, members of staff have the option to withdraw from the process at any time.

Mediation may be used voluntarily as an alternative to the Grievance Procedure, or may be undertaken during a formal process, or form part of agreed actions/recommendations at the completion of a formal procedure. Further details are outlined in the College's "Mediation Procedure.

5 Timeframe for Investigation

Where formal action is initiated, it is important that the investigation is completed as promptly and as thoroughly as possible. The College's policies and procedures provide some guidance on timescales that should be followed, and these should be adhered to as far as possible. To achieve this it will require co-operation from all parties.

Delays in completing an investigation can undermine the effectiveness of the process, for example relevant evidence may no longer be available, and the memories of the parties involved may begin to fade.

Delays and uncertainties during an investigation may also have a detrimental effect on both staff and service delivery, and may cause unnecessary concern and resentment for the member(s) of staff under investigation.

In carrying out investigations, the Investigating Officer is advised to prepare thoroughly by assembling all relevant documentation, deciding which witnesses are required and notifying relevant parties/individuals in advance. It is also recommended that the Investigating Officer collates any such documentation or other physical evidence as early as possible in the process, and schedules interviews as early and as close together as possible, to avoid contamination of evidence and potential breaches of confidentiality.

During the course of the investigation, the Investigating Officer must ensure that regular contact is maintained with all parties to ensure that they are kept up to date on progress. In the event of a delay in completing the investigation, arrangements must be made to advise all parties of the reasons for this, and revised anticipated timescales. The HR Representative will provide assistance with this.

6. Roles and Responsibilities

6.1 Who should conduct a formal investigation?

Consideration should be given as to who is best placed to take on the role of Investigating Officer. The College's policies and procedures provide guidance on the appropriate level of manager to undertake this role, and this is summarised below¹.

The Investigating Manager should have no prior involvement in the incident(s) or allegation(s), and should declare any potential conflict of interest that may disqualify them from undertaking the investigation at the outset. Where a conflict is declared, for example, where a manager is a potential witness in the case, it will not be appropriate for them to lead the investigation. An alternative manager would then be appointed to undertake the investigation.

6.1.1 Investigating Officer – Misconduct

Where allegations of misconduct have been made against an individual, the formal investigation will usually be undertaken by the individual's line manager or supervisor. However, an alternative person can undertake this role if appropriate.

Where the allegations relate to potential criminal activity, it may be appropriate to have an independent Investigating Officer who is not a member of the immediate line management team of any of the parties involved.

Where the allegations relate to potential fraud or other irregularity, the Investigating Officer will work under the direction of the College's Fraud Project Group. Further details are outlined in Ordinance C2 of the Appendix to the College's Statutes, "Policy and Response Plan for the Treatment of Fraud, Corruption and Irregularities".

There may also be cases where, given the nature of the allegations, it is appropriate to appoint an Investigating Officer who has specialist knowledge in a particular area, for example if the allegations relate to financial mismanagement, or if the investigation involves computer evidence.

¹ Generally, formal investigations will be undertaken by:

- Conduct issues: Line manager or supervisor
- Poor Performance issues: Line manager or supervisor
- Grievances: An appropriate senior manager, appointed in liaison with the appropriate Head of Department/Division

6.1.2 Investigating Officer – Poor Performance:

Where concerns have been raised in relation to an individual's performance, the formal investigation will normally be undertaken by the member of staff's immediate line manager or supervisor. However, an alternative person can undertake this role if appropriate.

6.1.3 Investigating Officer – Grievance:

Where a member of staff raises a formal grievance, the relevant HR Manager will liaise with the appropriate, Head of Department/Division to identify an appropriate senior manager to undertake the investigation.

If the grievance is raised against the Head of Department/Division, the HR Manager will liaise with the appropriate Faculty Principal to identify an appropriate Investigating Officer. Where the grievance is raised against the Faculty Principal, the Director of Human Resources will arrange for an appropriate Investigating Officer to be appointed to undertake the investigation.

6.2 The role of the Investigating Officer

It is important that the Investigating Officer has the right skills and expertise to conduct investigations, and remains unbiased and unprejudiced throughout the investigation process

It is their role to establish the facts and circumstances of the case by carrying out a thorough investigation in an objective and impartial way. The Investigating Officer should approach the investigation with an open mind and a commitment not to make any assumptions about an allegation, complaint or incident until all the facts have been established.

6.2.1 Key points of the role of the Investigating Officer

The Investigating Officer should:

- Consider carrying out an informal/initial investigation to establish whether a full investigation needs to be conducted.
- Review the information that is already available, and ensure that the investigation remains focussed on the specific allegation(s)/areas of concern/complaint(s).
- Ensure that the investigation is completed as thoroughly, and as promptly, as possible.
- Gather information irrespective of which "side" the information might support (i.e. do not just collect evidence that supports the allegation/complaint).
- Be able to adjust to the varied emotions that may emerge during the investigation process.
- If appropriate, consider what interim action to take as to whether suspension is still warranted (also see section 6.2.4 below).
- If appropriate, where the incident(s) or complaint(s) include allegations of harassment, bullying and/or victimisation, take appropriate action so that there is no communication between all parties directly or indirectly, not just in relation to the complaint but anything (also see section 6.2.5 below).
- If new or counter-allegations are raised by any party during the course of an investigation, determine whether they are related to the scope of the investigation and, if so, ensure any new concerns are thoroughly investigated. Where the Investigating Officer decides any new- or counter-allegations are outside the scope of the investigation, they will need to ensure that the reasons for their decisions are included in their investigation report.
- Summarise their findings and recommendations in an investigation report.
- If recommending formal disciplinary action present evidence at the disciplinary hearing and answer questions as required,
- If required attend any Appeal or Tribunal hearing as a witness.

6.2.2 Balance of probabilities

When evaluating the evidence gathered, and reaching a decision on the allegation(s) or grievance(s), the civil standard of proof (“on the balance of probabilities”) is sufficient to determine whether or not the incident or allegation took place. The Investigating Officer is not required to prove “beyond reasonable doubt” that the allegations/complaints have or have not been substantiated.

There may be occasions where, given the facts of the case, the “balance of probabilities” is not clear, for example where parties’ accounts of incidents or events conflict. In such circumstances, the Investigating Officer will need to consider:

- If it is possible to draw a reasonable conclusion one way or the other (for example taking into consideration any corroborating/other evidence, or the accounts of other parties);
- If it is not possible to draw a firm conclusion either way.

Where the Investigating Officer concludes that, on the balance of probabilities, there is reason to believe the validity of one version of events over another, they will need to justify the reasons for their conclusions, and demonstrate how they relate to the evidence gathered during the course of the investigation.

6.2.3 New or counter-allegations

When new or counter-allegations are raised during the course of the investigation, the Investigating Officer will need to determine whether they relate to the original scope of the investigation. Where the Investigating Officer determines that the new or counter-allegations do relate to the original scope of the investigation, the new areas of concern must be thoroughly investigated. However, where the Investigating Officer decides that the new or counter-allegations do not relate to the scope of the investigation, they must ensure that the reason(s) for their decision(s) are outlined in their investigation report.

The Investigating Officer will need to investigate sufficiently to ensure that the substance of the allegations are clear and that they are able to draw conclusions on these. However, they should avoid “fishing” for unrelated facts or issues that are not relevant to the allegation or complaint even where such matters have been raised by the complainant or respondent.

6.2.4 Suspension

In some circumstances (for example where the investigation is undertaken by the member of staff’s line manager), the Investigating Officer may also be required to consider whether it is necessary to suspend the member of staff while the investigation is carried out. Where suspension is considered appropriate, this should be handled in line with the principles outlined in the Disciplinary and Poor Performance Policy and Procedure.

6.2.5 Contact between parties

In some circumstances (for example where the investigation is undertaken by the member of staff’s line manager), the Investigating Officer may also be required to consider whether contact should be avoided between the parties involved while the formal investigation is undertaken. For example, this may be appropriate where a formal grievance relates to an allegation of harassment, bullying or victimisation. Further guidance on the steps to consider in such circumstances is outlined in the College’s Grievance Procedure.

6.2.6 Managing sickness absence during the investigation process

Any sickness absence that occurs during a formal investigation will be managed in line with the College’s Sickness Absence Policy and Procedure. In the event that sickness absence is prolonged, a referral may be made to Occupational Health to assess the member of staff’s fitness to continue with the investigation process. In such circumstances, the Investigating

Officer should seek advice and guidance from the HR Representative prior to continuing with the investigation.

6.2.7 Managing grievances during the investigation process

During the course of an investigation, a member of staff under investigation should raise any concerns or grievance issues about the conduct of the investigation or the Investigating Officer. An HR representative will review any concerns or grievance raised during the course of a disciplinary or poor performance matter and, in consultation with the member of staff and/or their representative, decide how the grievance should be considered based on the circumstances of the case.

Where a grievance is raised, the Investigating Officer should seek advice and guidance from the HR representative prior to continuing with the investigation. As a guide, where the grievance constitutes a response to the allegation(s) or complaint(s) under investigation, the member of staff's comments would usually be considered as part of any formal hearing or appeal process. Where the grievance includes allegations of harassment or bullying, consideration will be given to suspending the process to review the complaint under the appropriate grievance procedure. Where there are allegations of discrimination, consideration will be given to bringing in another manager to complete the investigation. Grievances that are not related to the case may be reviewed separately under the appropriate Grievance procedure.

6.3. The role of the HR representative in the investigation process

An HR representative will be identified to support and advise the Investigating Officer throughout the investigation, normally an HR Adviser or HR Manager. This support may include the following:

- Providing procedural advice regarding the policy and procedures to be used throughout the investigation process.
- Informing the member of staff of the appropriate support, for example details of Trade Union Representation (Unison, University and College Union (UCU) and Unite); Confidential Care (CiC) counselling service; Occupational Health; Harassment Support Contacts (HSC).
- Keeping all parties (the complainant and respondent) informed of the progress of the investigation.
- In more complex cases, accompanying the Investigating Officer to investigatory interviews.
- Addressing individual needs, as some parties to the investigation process may need reasonable adjustments in connection with arrangements for meetings or investigatory interviews to ensure proper access to the process. Where appropriate, the HR representative may also seek additional advice from the Equality and Diversity Unit, and the Disability Adviser.
- Supporting the Investigating Officer in the preparation and production of an investigation report.
- Co-ordinating the investigation and any subsequent hearing, ensuring that appropriate administrative support is available for the Investigating Officer and any panel (e.g. making interview arrangements, preparing draft letters and arranging for notes to be taken at the interviews).
- In more complex cases, accompanying the Investigating Officer at the formal hearing.

6.4 Arrangements for notetaking during the investigation process

Notes must be taken at all the formal investigation interviews, and the HR Representative will make arrangements for this.

The notes must provide an accurate reflection of the investigation. While it is not expected that the transcripts will provide a verbatim record of the interviews; key points of the interviews, including direct quotes and words or phrases used, should be noted.

To ensure that all the relevant information is captured, it is important that the notetaker is provided with sufficient background information in advance of the interviews. For example, it may be helpful to provide them with copies of key documents, and with the core questions the Investigating Officer intends to ask at the interview.

It is usual College practice for the note-taker to make handwritten (long-hand) notes of the investigatory interview, which are then typed up following the interview. The notetaker may, alternatively, make typed notes during the interview using a laptop. The College does not permit audio-recording of any interviews.

The notes taken at the investigatory interviews will be used, along with other evidence collected, to support the Investigating Officer's decision-making. In the event that it is recommended that a formal hearing takes place (for example following an investigation into allegations of misconduct, or concerns in relation to poor performance), the notes will also form part of the documentation presented for consideration by the Panel and, in the event of any subsequent appeal, by the appropriate Appeal Panel.

All parties interviewed as part of the investigation will be provided with a typed copy of the notes of their interview, and asked to sign and date them to confirm the content. To allow for this, the notes should be typed up promptly following the interviews, and the Investigating Officer should agree a timescale for this with the notetaker.

If a member of staff does not agree with the contents of the notes of their interview, they should be asked to make handwritten amendments to the interview record, initialling any changes they make. A copy of the amended interview record should be attached to the original typed version.

If the individual makes substantive changes to the interview record, the changes should be discussed with the individual. The Investigating Officer should also consider the nature of the amendments, and whether these need to be referred to in the investigation report.

Copies of all the interview records, together with the original handwritten notes must be retained.

6.5 The role of a Trade Union representative or work colleague during the investigation process

During the course of an investigation, any party may seek support from a Trade Union representative or work colleague. This may include being accompanied by the representative/colleague at any investigatory interview.

The College recognises three Trade Unions - Unison, University and College Union (UCU) and Unite. Where a member of staff is a member of a Trade Union that is not recognised by the College, they may be accompanied at any formal meeting by an official from that Trade Union. The representative will be asked to provide evidence of their Trade Union credentials.

In exceptional circumstances and depending, for example, on the sensitivity of the case, a member of staff who is not in a union and has justified reasons not to be accompanied by a work colleague may be allowed to be accompanied by a friend/relative who does not work for the College.

The support provided by the Trade Union representative or work colleague may include:

- Acting on their member's behalf (whether their member is the complainant(s), respondent(s) or witness(es)). They can assist with writing statements, clarifying any procedural issues and raising any concerns about the investigation process with the Investigation Officer and HR.
- Acting as a facilitator especially in grievance and harassment and bullying cases through the informal and formal investigation process.
- During an investigatory interview, the Trade Union Representative or work colleague may:
 - Respond on the individual's behalf to any view expressed during the interview;
 - Confer with the individual during the interview/ask for adjournments; and
 - At the end of the interview, add any further information to support the individual's case.

The Trade Union Representative or work colleague may not:

- Answer questions on behalf of the individual; or
- Address the meeting if the individual indicates that they do not want the accompanying person to do so.

6.6 Relationship with other agencies

The Investigating Officer may need to work with other agencies if specialist help is necessary, or where there is an incident which may amount to a criminal act and requires police involvement. This normally occurs where a member of staff has been accused of an allegation/offence covered under the Ordinance C2 of the College's Statutes, "Policy and Response Plan for the Treatment of Fraud, Corruption and Irregularities. In these situations advice and guidance must first be sought from the College Secretary who will in conjunction with the Fraud Response Group make a decision on the appropriate action to prevent further losses.

6.7 Potential criminal offences

If criminal allegations are made against a member of staff, or they are charged with, or convicted of, a criminal offence, the College may be required to conduct a misconduct investigation. In these situations advice and guidance should first be sought from the HR Representative before commencing an investigation. Consideration should be given to factors such as the seriousness of the offence, effect a charge or conviction would have on the individual's suitability to do their job, and their relationship with the College, and with work colleagues and customers.

Where it is considered appropriate to formally investigate the matter, it may not be necessary to wait until the outcome of any criminal proceedings is known before commencing the investigation. In such circumstances, specific advice and guidance should be sought from the HR representative.

7 Planning and Preparing the Investigation

An investigation that is thoroughly planned and properly prepared will ensure that the College has followed a fair procedure, and that any subsequent action taken is based on sound evidence. Workplace investigations are often very involved, complex and stressful for both/all parties and can take a considerable amount of time and resources. Carrying out a thorough investigation reduces the risk of tribunal claims, avoids need for costly re-investigating, and ensures the principles of natural justice are upheld.

7.1 Start of Investigation:

Some potential areas to consider, and points to think about, when commencing an investigation are outlined below:

7.1.1 Start of Investigation: Misconduct

When commencing a formal investigation in relation to allegations of misconduct, it might be helpful to consider:

- Is the investigation to consider a single incident or a series of incidents?
- If the allegation is of misconduct how is the misconduct relevant to the job?
- What documentation is there to support evidence of misconduct?
- What steps, if any, have already been taken to address the area(s) of concern and remedy the situation?

7.1.2 Start of Investigation: Poor Performance:

When undertaking a formal investigation in relation to concerns about an individual's performance, it might be helpful to consider:

- What informal steps have already been taken to try to address the areas of concern?
- What support has already been provided to the member of staff in relation to the areas of concern?
- What documentation/other evidence is available to illustrate the performance concerns, and actions taken so far to address these?

7.1.3 Start of Investigation: Grievance

When undertaking a formal grievance investigation, it might be helpful to consider:

- Is any further clarification required from the individual raising the grievance (for example, it may be unclear whether the grievance is being raised informally or formally)?
- What informal action (if any) has been taken in relation to the grievance(s)?
- What documentation is available in relation to the grievance, and/or informal action taken in relation to this?

7.2 Witnesses

In some workplace investigations there may be witnesses who have seen or heard firsthand part or all of the incident(s) alleged or complaint. In addition, during the investigation, the individual against whom the allegation(s) or complaint(s) has been made, or, where the investigation relates to a grievance, the individual who has raised the complaint, may name witnesses to support their case. The Investigating Officer must then establish whether the witnesses heard or saw something in relation to the incident or allegation/complaint. If the Investigating Officer decides not to interview all witnesses, they must include the reasons for this decision in their investigation report.

The Investigation Officer may initially request written statements from witnesses, outlining what the witness saw, heard or felt. Following the written statements, investigatory interviews will be arranged with the witnesses.

As part of the investigatory interviews, witnesses should be provided with sufficient information so that they may comment on the incident or allegation/complaint they may have observed. During the interviews, witnesses should be reminded that the details of the investigation are confidential, and must not be shared with others. They should also be advised that any breaches of confidentiality may be treated as a disciplinary offence. In addition witnesses should be made aware that their statement may be shared with the complainant/respondent.

A witness statement should be signed and dated by the person to confirm that they agree to the contents of the statement.

A witness providing a written statement will normally be required to attend an investigatory interview. In addition, following the investigation, where the Investigating Officer concludes that there is a case to answer, the witness would also be expected to attend any formal hearing convened as a result of this finding.

7.2.1 External Witnesses

There may be occasions where the incident(s) alleged or complained of may have been witnessed by an individual who is not an employee of the College. For example, they may be a student, a contractor or a visitor. In such circumstances, the Investigating Officer is able to approach external witnesses. It may be reasonably expected for internal witnesses obliged to attend an investigator interview, or provide a witness statement; however the same principle will not apply for external witnesses as there is no obligation.

The Investigating Officer will need to make it clear from the start that they need their help to complete the investigation and express the importance of confidentiality being maintained. If the witness is still not cooperative the HR representative will support the Investigating Officer to determine the reason why they are reluctant to attend an investigatory interview, the impact this will have on the investigation, whether a written statement would suffice as evidence or if it should be discounted from the investigation.

7.2.2 Witnesses wishing to remain anonymous

There may be occasions where a witness wishes to remain anonymous or does not wish to get involved for fear of reprisal. Anonymity will only be permitted in exceptional circumstances where it is considered that there is a real and pertinent fear, and the witness has good grounds for that belief. Where anonymity is granted, the information given by the witness should be incorporated into a written statement. Initially the statement should be prepared without concern about anonymity. If necessary, certain parts of the statement can subsequently be deleted before it is provided to the accused in order to prevent identification of the witness.

Where anonymity is permitted, the witness should be made aware that, in the event that an Employment Tribunal claim is subsequently submitted, the College will not be able to guarantee anonymity.

Where anonymity is requested, the Investigating Officer should first seek advice and guidance from the HR Representative to determine the impact this may have on the investigation if not granted.

7.3 Confidentiality boundaries

Before commencing any investigation, the Investigating Officer must always bear in mind that confidentiality is vital. This applies to all parties including witnesses involved in the investigation. Where an allegation/complaint has been made against a number of members of staff it is important that each person being investigated is only given details of the specific allegation/complaint which have been made against them.

The Investigating Officer must remind all parties of the need for confidentiality and that they must not discuss the details of the case with anyone else. All parties will be informed that breaches of confidentiality may be treated as a disciplinary offence.

7.4 Gathering information

The Investigating Officer would be expected to think around the issue: is there some other way in which the incident being investigated could have happened? How reliable is the information? The Investigating Officer should not only rely on witness statements, as this may result in other crucial evidence being overlooked. There is no limit on what may be considered as evidence, as long as it is relevant to the specific allegation(s) or complaint(s). For example, files, documents, CCTV footage or computer records can all be considered, if available. Policy

documents and training records can also be produced as evidence. Consideration also needs to be given as to whether any physical evidence is available (i.e. actual bruising, abrasions, or photographic evidence etc...). The Investigating Officer may also wish to visit the scene of the alleged misconduct. This may provide the Investigation Officer with important prompts as to the questions to ask at the investigatory interviews.

8 Investigatory Interviews

8.1 Preparation of investigatory Interviews

It is important that the principles of natural justice apply, i.e. that a person complained against (respondent) is fully aware of the complaint or allegation made, and has the opportunity to respond to the complaint. As part of the investigation, the Investigating Officer will make arrangements to interview the complainant and respondent, and any witnesses. Prior to the interviews, the Investigating Officer may also choose to ask the parties involved to provide written statements.

When preparing for the investigatory interviews, the Investigating Officer should think about:

- Where the interviews will take place. Investigatory interviews should be conducted in a private setting and away from disturbance and interruptions.
- Ensuring that anyone who may have relevant information is interviewed. It is important to take prompt action before memories fade.
- The schedule of the investigatory interviews. The interviews should be conducted as close together as possible, preferably on the same day. The list of people to be seen may grow as early interviewees name other people who may have relevant information.
- The order of the investigatory interviews. In setting the order, the Investigating Officer should consider the circumstances of the particular case. It may also be helpful to discuss this with the HR Representative. Where the investigation relates to a formal grievance, it is usual practice to interview the member of staff who made the complaint first, to clarify the full details of their complaint, followed by any witnesses that support the complaint. Following this, interviews will be arranged with the individual against whom the grievance was raised, and any witnesses they put forward. Follow-up interviews can also be conducted if necessary.
- Ensuring that all parties are provided with reasonable notice of their investigatory interview(s). All parties (including witnesses) are entitled to be accompanied at their interview by a Trade Union representative or work colleague, and should be advised of this in advance of the interview. Where the investigation is more complex, a HR representative may be present to assist with the investigation.
- Whether there are any concerns about the chosen companion. For example, if an individual wishes to be accompanied by an individual who is a potential witness to the case, the member of staff should be advised to select a different companion to avoid suggestions of collusion between witnesses.
- Whether any adjustments need to be made in relation to the investigatory interviews. For example, where a member of staff has disclosed a disability, arrangements for the interview should consider any requirements for reasonable adjustments to accommodate their disability. Where a member of staff has difficulty understanding spoken or written English, appropriate accommodations should also be made. The Equality and Diversity Unit or the Disability Adviser can provide additional advice.

- The core questions they will ask at each interview, and prepare outlines of these in advance of the interviews. Other questions may arise as interviews progress.
- Ensuring arrangements are in place for notes to be taken at each investigatory interview. Each member of staff interviewed will be provided with a copy of the notes of their individual meeting and asked to confirm that these notes are an accurate record of the meeting. The Investigating Officer will ask all interviewees if he or she has any additional information, corrections or clarifications to the facts discussed in the interview and explain that they can add their comments to the notes.
- The Investigating Officer should be prepared to encounter a range of extreme emotions from those involved in the investigation process. The Investigating Officer needs to remain impartial and focused. The Investigating Officer needs to remain sensitive to all parties, recognising that the proceedings are likely to be stressful and anxiety laden for all.

8.2 Questioning techniques for investigatory interviews

Asking the right question is crucial in the investigating process in order to gather the relevant information and to help reach a reasonable conclusion. It is very important that the Investigating Officer is consistent and asks questions that reflect what has been encountered in previous interviews and in documentation.

The Investigating Officer wants to obtain a clear understanding from the parties interviewed of what happened before, during and after the alleged incident(s) or complaint(s), and whether there were any witnesses to the events. In addition, it is essential that all parties are assured that the investigation is objective, and that no judgements or decisions will be made until all interviews have been completed and any other evidence has been collected and considered. The questioning techniques adopted by the Investigating Officer will be key in achieving these aims.

The types of questioning techniques that may be adopted include:

8.2.1 Open questions

The Investigating Officer should use open questions (*who?, what?, why?, where?, when?, how?*) as often as possible. Open questions are helpful in getting the interviewee to provide full answers and gain an overall picture of events. Here are some examples:

- *Describe the circumstances in more detail*
- *Tell me what happened next*
- *In your own words describe.....*
- *How did it make you feel?*

8.2.2 Closed questions

Closed questions are useful in an investigation when checking a person's understanding or to obtain specific facts. A closed question usually receives a single word Yes or No or a very short, factual answer. Examples of closed questions include:

- *Did you hear what was said?*
- *Did you see what happened?*

8.2.3 Funnelling questions

The "funnelling" technique is very useful in helping the witness re-live the scene and gradually focus on an important useful detail. This technique involves starting with general open

questions, and then homing in on a point in each answer, and asking more and more detail at each level. For example:

Question *How many people were involved in the incident?*
Response *About five*

Question *Do you know who they were?*
Response *Not all of them: I know three*

Question *Had you seen any of the other two before?*
Response *Now you come to mention it, yes - but they are not in our Department*

8.2.4 Probing questions

Probing questions are another strategy for finding out more detail. They are good for gaining clarification to ensure that the Investigating Officer has the whole story and understands it thoroughly, and also for drawing information out of people who are not forthcoming or are trying to avoid telling the Investigating Officer something. For example:

- *What exactly did you mean by “XXX”?*
- *Could you tell me more about YY?*
- *Why did you say that?*

8.2.5 Awkward questions

Depending on the circumstances of the investigation, the Investigating Officer may need to ask some or all of the parties difficult or embarrassing questions.

The Investigating Officer may consider asking these toward the end of the interview, when they have had an opportunity to develop a rapport with the individual.

8.2.6 Leading questions

Leading questions must be avoided so that the Investigating Officer does not influence accounts. For example:

- *Do you agree that the reason why he went sick was because he was not capable of doing the job?*
- *Would you describe your manager as a bully or that he has a poor management style?*
- *Would you describe him as aggressive or sarcastic?*

The Investigating Officer should avoid putting words into witnesses' mouths or suggesting answers. All questions should aim to encourage witnesses to recall their version of events in their own words.

Similarly, the Investigating Officer must not suggest answers before hearing the accused member of staff versions of events. For example:

- *Did you touch her leg or just happen to bump into her?*
- *Did you call him a “skank” out of anger or were you joking around?*
-

8.3 Conducting formal investigatory interviews

8.3.1 Opening the investigatory interviews

The following points should be covered by the Investigating Officer at the start of the investigatory interviews:

- Introduce all parties and outline details of roles
- Set the interview in context (for example, it is taking place under the provisions of the College's Disciplinary and Poor Performance Policy and Procedure)
- Clarify individual's right to be accompanied at the interview. If the member of staff is not accompanied, confirm with them that they are still happy to proceed with the meeting.
- State their impartiality, and reassure the member of staff that no decisions have yet been made in relation to the validity of the allegation/complaint or to the outcome of the investigation.
- Explain the purpose of the interview i.e. to look into the allegation/complaint made, to collect evidence that may help to fully understand the events that may have occurred.
- Explain for what purpose the statements will be used, and the meaning of "confidential".
- Explain how and when the individual can see and review the statement they make.
- For grievance and harassment cases the Investigating Officer should seek clarification with the complainant as to what they would consider to be a satisfactory outcome.
- Explain how the interview will be conducted, and that either party may request a short adjournment if necessary.
- Explain that further interviews may be required to clarify points if additional evidence comes to light during the course of the investigation.
- (Where the investigation relates to issues of misconduct or poor performance, or a grievance that includes complaints of harassment, bullying or victimisation) explain to the individual against whom the allegations/complaints or concerns have been made that, at the conclusion of the investigation, if the allegations/complaints/concerns are upheld, they may be required to attend a formal hearing.
- (Where the investigation relates to issues of misconduct or poor performance, or a grievance that includes complaints of harassment, bullying or victimisation) explain to any witnesses that, at the conclusion of the investigation, if the allegations/complaints or concerns are upheld, they may be required to attend a formal hearing as a witness.

8.3.2 During the course of the investigatory interview

During interviews with the complainant, respondent and witnesses the Investigating Officer should be prepared for the possibility that depending on the nature of the investigation and especially in harassment and bullying cases, they may not be cooperative in answering all questions, or may volunteer more information than necessary. They may be silent in that they say nothing, or answer questions in as few words as possible. They may be hostile, by arguing when the Investigating Officer begins to ask probing questions.

The member of staff does not have the right to ask questions of the Investigating Officers, other than those relating to the investigation process itself.

If a discrepancy arises during the course of the interview the Investigating Officer should make a note of it.

When the Investigating Officer has asked his/her questions, he/she should ask the respondent/witness if there is anything they would like to add.

If any party becomes very emotional, the Investigating Officer should ask the member of staff if he/she would like a short break to regain their composure.

8.3.3 Evaluating the evidence

Once the investigatory interviews have been completed, and all available evidence has been collected, the Investigating Officer needs to evaluate the evidence and reach a conclusion, based on the “balance of probabilities”, as to whether the incidents, allegations or complaints did or did not happen.

The Investigating Officer may find it helpful to consider the following questions when evaluating the evidence:

- When (time and date) and where did the incidents occur?
- If there were witnesses, where were they? How did they see/hear what happened?
- What happened? In what order?
- Was this a “one-off” incident, or a series of incidents?
- What impact has the allegation(s)/incident(s) had on all parties?
- Is there any inconsistency in the original statements and witness evidence? (If conflicting evidence is present, a view may still be taken that one version of events is more likely than another, on the balance of probabilities).
- Consideration should be given to any bias, motivation or influence an individual witness may have.
- Have any steps been taken previously to try to resolve the situation, such as counselling, training or mediation?

8.4 Investigatory Interview Notes

An HR representative will attend investigation meetings to take notes. These notes will act as a record of the main points discussed and will not be a verbatim transcript, although some key statements may be captured verbatim. Following the meeting a typed copy of the notes will be forwarded to the individual, to which they may make amendments, add clarification or supplementary points. The individual will then be asked to sign these off as a correct record of the meeting. Should any of the individual’s amendments not concur with the Investigating officer’s recollection of the meeting, a note to that effect will be appended to the notes and both the individual’s version and the Investigating Officer’s version of the meeting notes will be placed on record.

9 Preparing an Investigation Report

Once the investigation has been completed, the investigation report should be completed as promptly as possible.

The format of the investigation report will vary depending on the nature of the investigation (i.e. whether it relates to alleged misconduct, concerns in relation to an individual’s performance, or follows submission of a grievance).

9.1 Investigation Report: Misconduct or Poor Performance:

Once the investigation is completed, the Investigating Officer will need to complete a written report. The report should include the following areas:

9.1.1 Introduction

- Outline the complaint/allegation/incident, or the areas of concern raised in relation to the member of staff’s performance
- Provide details of the background to the issues under investigation

- Provide details of the relevant College Policy or Procedure, as determined by the nature of the investigation
- When the investigation was commissioned and by whom
- Any relevant information about the process or progress of the investigation

9.1.2 Methodology

- Outline steps taken to gather the evidence, including a list of those interviewed
- Where documentation/other evidence (e.g. CCTV footage) was reviewed, this should also be listed

9.1.3 Findings

- Relevant headings in this section might include the various complaints or allegations made, or the areas of performance where there are concerns.
- Address each of the allegations/complaints raised, with an outline of the individuals' responses, explanations and points of clarity.
- Where the report relates to poor performance, include reference to informal action taken to address the performance concerns, and whether these have/have not been successful and, if possible, the reasons why.
- Details of any consistencies or inconsistencies in evidence should be outlined, and explanations given if known.
- If the Investigating Officer was more convince by a particular version of events where conflicting views were given, details of the reasons for the Investigating Officers decision should be included
- This section should include cross-references to original statements, investigatory interviews or other evidence, which should be included as part of the appendix.

9.1.4 Conclusions and recommendations

- The Investigating Officer should outline what their conclusion is in relation to each of the allegations/complaints or areas of concern in relation to performance, and the reasons for their conclusions.
- There may be some allegations/complaints or areas of concern upon which, based on the evidence available, the Investigating Officer is unable to draw a firm conclusion. They should make this clear in their report.
- Based on their conclusions, the Investigating Officer may recommend:

I. That there is a case to answer:

In this event, the Investigating Officer may recommend:

- That a formal hearing is convened
- That alternative action is taken, for example: informal action, informal training/counselling/mediation

II. That the investigation is inconclusive

In this event, the Investigation Officer should seek advice and guidance from the HR Representative on handling/communicating the outcome to all parties involved.

III. That there is no case to answer

9.1.5 Appendix to the report

This section will contain all the information relevant to the investigation. This will include, for example:

- Copies of signed investigatory interview records
- Copies of documents and other evidence reviewed

9.2 Investigation Report: Grievance:

Once the grievance investigation is completed, the Investigating Officer will outline their decision, and the reasons for this, in a report or letter. The Investigating Officer may find some of the format/structure outlined under 9.1 useful in preparing a report or letter when summarising the following points::

- the nature of the complaint
- the investigation that was conducted
- the decision
- the reason for the decision
- any outcome for work and work practices as a result of the decision

A copy of the report or letter, together with a copy of the meeting records and any other evidence collected, will be provided to the member of staff who made the complaint. A copy of the paperwork will also be sent to individual(s) against whom the complaint was made, representatives of both members of staff, and the relevant line manager(s).

In relation to grievances that include allegations of harassment, bullying and victimisation, if the Investigating Officer concludes that there is a prima facie case to answer in relation to the harassment, bullying and/or victimisation, a disciplinary hearing, under the relevant disciplinary procedure, will be convened.