

Employee Investigations Policy

W37

Additionally refer to:

- W7 Disciplinary Policy
- W10 Employee Performance Management Policy & Procedure
- W31 Handling Concerns about Doctors and Dentists Policy
- W22 Employee Wellbeing & Attendance Management Policy
- W4 Resolving Bullying and Harassment Policy
- CG04 Serious Incident Policy
- CG05 Reporting and Investigation of incidents, Complaints and Claims
- CG07 Concerns and Complaints
- CG17 Guidelines for Managers and Employees on the management of individuals involved in adverse events
- NHSI Just Culture Guide: Values and expectations

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1 Policy on a Page

This Employee Investigations policy of the Trust aims to ensure a fair, consistent and effective approach in dealing with employee investigations. This policy is in-line with the ACAS Code of Practice on Disciplinary and Grievance Procedures and in all cases a full and thorough investigation will take place to inform appropriate management decisions as part of the procedural process.

This policy applies to all employees of the Trust. However, for investigations relating to the conduct/capability of Doctors and Dentists, there are additional requirements as stipulated by the Maintaining High Professional Standards in the NHS (MHPS), which are outlined in the Trust's Disciplinary Policy for Doctors and Dentists (HR07). Any investigations relating to the conduct/capability of Doctors and Dentists must comply with HR07 and MHPS.

The Employee Investigations Policy can be used in conjunction with other Policies e.g. Disciplinary and Grievance.

The policy provides the framework and arrangements for the process of carrying out an investigation which includes:

- Commissioning Manager sets out the terms of reference of the investigation
- Commissioning Manager appoints an Investigating Officer
- Commissioning Manager shares all information gathered with the Investigating Officer.
- Investigating Officer attempts to gather all relevant information.
- Investigating Officer consults with HR Advisory Team and Commissioning Manager and presents their findings in a written report.
- Commissioning Manager reviews the Investigators report and decides on action and next steps informing the relevant members of staff.

2 Document Statement

This policy sets out arrangements to ensure that employees are treated fairly, the policy is applied consistently and the outcome is an effective approach in dealing with employee investigations. The process is designed to ensure a full and thorough investigation takes place to meet the guidance as set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures that enables appropriate management decisions to be made in the context of the NHSI/e “Just Culture” principles.

The Trust recognises that investigations may be difficult for those involved and is committed to working with employees and their representatives to provide adequate support throughout the process.

3 Overview

This policy applies to all employees of the Trust. However, for investigations relating to the conduct/capability of Doctors and Dentists, there are additional requirements as stipulated by the Maintaining High Professional Standards in the NHS (MHPS) which are outlined in the Trust’s Disciplinary Policy for Doctors and Dentists (HR07). Any investigations relating to the conduct/capability of Doctors and Dentists must comply with HR07 and MHPS.

This policy may be used in a variety of circumstances that include (but are not limited to):

- Allegations relating to employee conduct or behaviours
- Concerns raised under the Trust’s Resolving Bullying and Harassment Policy
- Gathering information to determine the outcome of a Grievance
- Gathering information in relation to whistleblowing concerns

Where an incident/complaint forms part of the Clinical Governance processes within the Trust, an investigation under this policy may run in parallel where appropriate. Reference should be made to the Trusts Clinical Governance guidelines, policies for supporting staff when adverse events, incidents or complaints are received and guidance from professional bodies as appropriate particularly in cases where there are potential “fitness to practice“ considerations.

4 Responsibilities

4.1 Trust Board

The Board has responsibility to oversee this policy and ensure that appropriate processes and actions are in place to ensure employees are treated in a fair and consistent manner.

4.2 Executive Directors and other Senior Managers

Are responsible for ensuring appropriate systems and processes are in place across their Divisions and Departments to disseminate shared learning from investigations, assisting the appointment of investigating officers and ensuring that these matters are dealt with in a timely manner and in accordance with this policy.

4.3 Line Managers

Line Managers are responsible for ensuring employees are aware of this policy and its contents and for supporting employees if they are required to participate in an investigation. This includes ensuring that employees are given appropriate paid time to take part in an investigation in a timely manner and making referrals to the Occupational Health and Staff Counselling Services where appropriate.

4.4 Commissioning Managers

The commissioning manager will normally be a senior manager within the relevant Division who has taken part in the Decision Making Group (DMG) at the start of the investigation. However, they must be independent of the issue under investigation.

At the start of an investigation, Commissioning Managers are responsible for setting out the terms of reference for the investigation and appointing an appropriate Investigating Officer and administrative support.

The Commissioning Manager has oversight on the progress of the investigation to ensure it is completed in accordance with this policy and in a fair, consistent and timely manner. This is normally achieved through case reviews which should take place at least monthly during the investigation.

The Commissioning Manager must also ensure the employee(s) being investigated is updated on the progress of the investigation on a monthly basis.

At the conclusion of the investigation the Commissioning Manager will review the findings and make a decision on appropriate action in accordance with the relevant Trust policy.

4.5 Investigating Officers

Investigating Officers are responsible for carrying out investigations in accordance with this policy in a fair, consistent and timely manner, observing the principles of the NHSI/e “Just Culture” guidance. Appropriate training and/or support will be provided by the HR Advisory Team.

The role is to establish the facts of the case and to present these to the Commissioning Manager. The Investigating Officer does not make any recommendations or judgments on the findings of the investigation.

Investigating officers must be independent of the issue being investigated and if the allegations relate to a professional issue they must have an appropriate level of knowledge to conduct the investigation, or a specialist adviser will need to be appointed to advise the Investigating officer

4.6 People & OD Directorate

The Director of People & OD has responsibility for this policy.

The HR Advisory Team will provide support and guidance in accordance with the ACAS code and related employment law, assisting in the timely completion of investigations. In exceptional circumstances this may include assisting the Investigating Officer in compiling their investigation report. The report remains the responsibility of the Investigating Officer who must sign off the final report.

4.7 All Staff

Employees are required to participate fully during investigations, in a timely and constructive manner, whether this concerns them personally or a work colleague. Paid time off will be provided for staff to take part in investigations. Employees are expected to provide full and honest evidence that will be used and stored in accordance with this process (details in section 6).

All matters relating to investigations are considered strictly private and confidential. Employees should not discuss the details of the investigation with anyone, with the exception of their representative/colleague, the Investigating Officer, the Commissioning Manager and the HR Advisory Team in relation to the case. Failing to maintain confidentiality may result in disciplinary action.

Where an employee wishes to be accompanied or represented (in accordance with section 5) they will be responsible for contacting their representative and arranging for them to attend meetings.

4.8 Trade Unions and Trust Employed Work Colleague

The role of the Trade Union/Professional organisation representative (TUPO) or work colleague is to act as advocate and representative for the employee and to provide advice and support..

4.9 Staff Psychological Service

The Staff Psychology Service is available to support any member of staff who is experiencing emotional distress in relation to a work-related issue. Individuals wanting to access their support can refer themselves by emailing: sath.staffpsychology@nhs.net or a manager can refer on their behalf. Information about the service is also available on the intranet: [SaTH Intranet - Staff Psychology Service](#)

5 Employee representation

At any formal meeting relating to an investigation, an employee has the right to be represented, if they wish, by a representative from a recognised TUPO or supported by a Trust employed work colleague. Although there is no right to be accompanied at informal meetings; to support wellbeing and with the permission of the manager, employees may request to be accompanied at informal meetings provided this does not unreasonably delay the meeting.

The representative/work colleague cannot be someone who is involved in the investigation. The Trust will facilitate time off for TUPOs and workplace colleagues acting as support to the employee. It is strongly advised by the Trust and Staff Side Representatives that employees seek the advice and support of their TUPOs when involved in investigations.

Employees may not bring members of their family into the informal or formal processes of this policy. Consideration will be given to any reasonable adjustments that are required to support the employee in accordance with protected characteristics within the Equality Act. The involvement of family members in this context may be appropriate.

6 The Investigation Process

6.1 Commissioning an Investigation

6.1.1 Prior to commissioning an investigation advice must be sought from the HR Advisory Team.

6.1.2 If the investigation relates to disciplinary issues, please refer to the Disciplinary Policy for guidance on the role of the Decision Making Group prior to commissioning an investigation.

6.1.3 The Commissioning Manager must have enough information to be assured that a formal investigation is appropriate in the circumstances. This may include documentation and written statements from those involved. The decision should not be taken lightly as it may have a significant negative affect on those involved and can be a costly and time-consuming process.

6.1.4 At the start of each investigation, the Commissioning Manager will specify in writing the terms of reference for the investigation and provide this to the appointed Investigating Officer along with any relevant documentation already gathered. Where the investigation involves a specific professional issue, an appropriately qualified person should be appointed as the Investigating Officer, or as a specialist advisor to the Investigating Officer.

6.1.5 The Commissioning Manager will also notify the employee(s) of the name of the Investigating Officer at the earliest opportunity.

6.1.6 Where there are justifiable reasons for doing so, such as a conflict of interest, an individual may request that an alternative Commissioning Manager and/or Investigating Officer is appointed

before the investigation is started. Such a request will be considered by another senior manager not involved in the case. If the decision is to reject the request, clear reasons must be given..

- 6.1.7 The Commissioning Manager will review all relevant information about a case which may include reviewing an employee's personal file(s), which in turn will be provided to the Investigating Officer. The employee should be informed of any personal information that is shared about them. Employees may request to review their personal file with their Line Manager.
- 6.1.8 In some circumstances, the Commissioning Manager may benefit from referring to the NHSI/e Just Culture Guide when making a decision to commission an investigation.
- 6.1.9 Where the investigation relates to the actions of an accredited Trade Union representative no formal investigation shall be commenced until the circumstances of the case have been discussed with a fulltime officer of the organisation concerned.

6.2 The Investigation

- 6.2.1 Investigating Officer should always read this policy prior to an investigation and seek advice from the HR Advisory Team. Appropriate training/support will be provided.

Wherever possible, the same investigating officer should complete the entire investigation. In exceptional circumstances to ensure the investigation can be completed in a timely manner, an alternative investigating officer may need to be appointed during the investigation. If this is necessary, the new investigating officer must be provided with all relevant evidence gathered so far and should consider re-interviewing those who have already been interviewed.

- 6.2.2 The Trust recognises the impact that can be caused by investigations and will adopt an inclusive, compassionate and person-centred approach. The process must be underpinned by an overriding concern to safeguard employee health and wellbeing, whatever the circumstances. Further information about wellbeing and support during an investigation can be found in the Disciplinary Policy.

It is the responsibility of all those involved to make reasonable adjustments to the process to support the health and wellbeing of those taking part.

Employees affected may seek health and wellbeing support from any of those listed below, at any time during the process.

- Line manager
- An alternative senior manager if the line manager is not available or the line manager is involved in the case.
- Human Resources (ext. 2891 or email: sath.hradvice@nhs.net)
- A Trade Union/Professional Organisation representative (details and contact numbers are available on the HR pages of the Trust intranet site or via switchboard)
- Freedom to Speak Up Guardians (telephone via switchboard or email: sath.ftsu@nhs.net)
- The line manager may refer the employee to Occupational Health or the Trust's Employee Assistance Programme. Equally, the employee can self-refer to Occupational Health.

- 6.2.3 The Investigating Officer will undertake a detailed and thorough investigation by attempting to gather all relevant evidence. This is usually through formal interviews and review of documentation but may extend to other methods (e.g. CCTV). The Investigating Officer will decide who they need to interview and what evidence they need to gather in consultation with the HR Advisory Team, the Commissioning Manager and the appointed specialist advisor (if one has been appointed). The Investigating Officer should also encourage the employee to bring any material evidence to the meeting to enable the investigation to cover all the facts.

- 6.2.4 Prior to an investigation interview, the Investigating Officer will write to the employee outlining what will be discussed, providing sufficient information to allow them to respond at interview. There is no requirement for the Investigating Officer to provide a list of questions in advance of the interview.
- 6.2.5 All employees who are interviewed must be offered the opportunity to be accompanied to their interview in accordance with section 5 of this policy. This person may (with the employee's permission) speak on the employee's behalf but cannot answer questions for them.
- 6.2.6 Reasonable notice of meetings will be given (normally 7 calendar days). If it is necessary to postpone any interview due to the availability of the employee or their representative/colleague another date will be arranged by the Trust, ideally within 5 working days of the original date. All parties must work together to find a suitable date within a reasonable time frame. The Investigating Officer should raise any concerns about delays with the Commissioning Manager.
- 6.2.7 Formal interviews will be recorded. This may be via audio recording and transcription, or via a note-taker. Consent must be gained from all those taking part for digital audio recording to take place. After the meeting the Investigating Officer should check the accuracy of the minutes before providing a copy to the individual concerned and their representative/work colleague if the employee consents to this. Employees will then be given an opportunity to review the minutes and make any comments as needed.
- 6.2.8 Interviews will normally take place in person. However, at the discretion of the Investigating Officer and with the agreement of the employee there may be occasions where evidence is gathered via other means (e.g. telephone interviews, questions in writing and through virtual meetings via Microsoft Teams technology).
- 6.2.9 Personal data gathered by, or released to, the Investigating Officer must be held securely, and its use limited to the matter under investigation. The Trust will operate consistently with the guiding principles of the General Data Protection Regulations (GDPR).
- 6.2.10 In accordance with GDPR any evidence provided by employees during the investigation may be retained within their personal file and/or stored securely (electronically or hard copy) by the HR Advisory Team. If the evidence contains sensitive personal data, employees may request that this is deleted or returned to them at the end of the process.
- 6.2.11 During the investigation into the allegations against the employee and dependant on the information gathered, the Terms of Reference (TOR) may be changed or added to and the revised TOR shared with the relevant parties. It is important that the Investigating Officer provides the Commissioning Manager with an update on progress on at least a monthly basis. The Commissioning Manager must then update the employee on a monthly basis. Suspended employees require more frequent updates. Please see section 7.1.2 of the Disciplinary Policy.
- 6.2.12 The findings of the investigation should be documented in a report with accompanying appendices and provided to the Commissioning Manager. Templates and guidance will be provided by the HR Advisory Team.
- 6.2.13 All patient identifiable data in documents **must** be anonymised or pseudonymised in the investigation report and appendices.
- 6.2.14 If an employee leaves the Trust before the investigation has been concluded, where it is possible the investigation will be completed and depending on the outcome of the investigation i.e. case to answer or no case to answer this will be communicated to the employee. If there is a case to answer the employee may be informed that a referral will be made to their Professional body and reflected in any future work or professional reference request.

6.2.15 Evidence may be shared with the Trust's Patient Advice and Liaison Service (PALS) where the investigation is linked to a complaint. See Concerns and Complaints Policy for any investigations linked to patient/relative complaints. The Trust may also be required to share evidence with the police if requested to do so.

6.3 After the Investigation

When the findings of the investigation have been received and reviewed, the Commissioning Manager will decide what action is appropriate and notify the relevant employee(s). There are many possible circumstances and outcomes which cannot all be described here, however some of the possible outcomes to an investigation may include:

- No further formal action is required.
- Local department learning, updates to policies, SOP's etc.
- If the Commissioning manager decides there is a case to answer then a hearing will be set up in accordance with the Trust's Disciplinary Policy where the investigation relates to an employee's conduct or behaviour.
- Management in accordance with the Trust's Employee Wellbeing and Absence Management Policy where the findings indicate a health issue.
- Management in accordance with the Trust's Employee Performance Management Policy where the findings indicate a performance issue.

7 **Training needs**

The Trust acknowledges the importance of training for managers involved in the application of this policy and will therefore ensure that appropriate training and support is available from the People & OD Directorate. Investigating Officers are expected to have attended training before carrying out an investigation and, after training, may also benefit from shadowing an investigation before leading one themselves.

Any manager commissioning or undertaking an investigation must receive appropriate training/support from the HR Advisory Team before and during the process.

All managers are expected to disseminate information in relation to this policy to staff. Any staff involved in investigations will be directed towards this policy.

8 **Review process**

This policy will be reviewed as and when required and within 3 years. The monitoring of this policy includes an annual audit that comprises of the table below. Where non-compliance is identified an action plan will be drawn up and monitored at the Workforce Committee. Where remedial action can be taken immediately, the action must be recorded appropriately.

9 **Equality Impact Assessment (EqIA)**

This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics.

10 **Process for monitoring compliance**

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
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The policy is fairly applied to staff in a transparent and consistent manner	Use of workforce database to review cases by protected characteristics under the Equality Act 2010.	People Advisory Team Manager	Yearly	JNCC
Number of cases being referred to HR Advisors/Managers for support	Use of workforce database	People Advisory Team Manager	Yearly	JNCC
Number of investigations that result in no case to answer	Use of workforce database	People Advisory Team Manager	Yearly	JNCC
Number of trained and untrained IO's doing investigations	Use of workforce database and training records	People Advisory Team Manager	Yearly	JNCC

11 References

- Legislation
 - Employment Act 2008
 - Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
 - Employment Rights Act 1996 as amended
 - Employment Rights Dispute Resolution Act 1998
 - Employment Relations Act 1999
 - Employment Rights Act 2004.
 - Previous legislation covering discipline and grievances at work was historically found in the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752). However, the procedures were repealed in their entirety from 6 April 2009 under the Employment Act 2008)
- ACAS – Code of Practice for Disciplinary and Grievance Procedures - http://www.acas.org.uk/media/pdf/k/b/Acas_Code_of_Practice_1_on_disciplinary_and_grievance_procedures-accessible-version-Jul-2012.pdf

12 Associated Documentation

- NHSI Just Culture Guide
Available: <https://www.england.nhs.uk/patient-safety/a-just-culture-guide/>
- Disciplinary Policy
- Employee Performance Management Policy & Procedure

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- Equality and Diversity Policy
- Handling Concerns about Doctors and Dentists Policy
- Drug, Alcohol and Other Substance Misuse Policy
- Employee Wellbeing & Attendance Management Policy
- Resolving Bullying and Harassment Policy

All the above are available from:

Internal - http://intranet/hr/HR_Policies.asp

External - <https://www.sath.nhs.uk/working-with-us/hr/policies/>

- CG04 Serious Incident Policy
- CG05 Reporting and Investigation of incidents, Complaints and Claims
- CG07 Concerns and Complaints
- CG17 Guidelines for Managers and Employees on the management of individuals involved in adverse events

Available from http://intranet/document_library

[Template letters and guidance documents available from the People Advisory Team on request.](#)