

**Nottinghamshire County Council
Investigation Guidelines**

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Section 1

1.1 Principles of investigation – key points

- The aim of any investigation under the County Council's procedures (discipline, harassment and grievance) should be to conduct a thorough and impartial inquiry which covers all matters of relevance to the matter under investigation. It is a fact finding exercise and enables the employer to make an informed decision.
- An investigation should be conducted in an objective open minded way without any pre-judgement and completed in a timely manner
- An investigation should be kept confidential and this should be explained to all staff involved in the process.
- HR advice should be sought prior to commencing any formal investigation.
- **Appendix 1** provides a summary of the investigation process.

1.2 Commissioning an investigation

- The manager who is commissioning the investigation (Commissioning Officer) should not be implicated in the case.
- The Commissioning Officer comprehensively completes the Investigation Brief proforma by outlining the nature of the allegations and the scope of the investigation, list of persons to be interviewed and timescale for completion.
- The Commissioning Officer will appoint the investigator(s) depending on the seriousness and/or the complexity of the matter. The Commissioning Officer should consider the following when appointing an investigator(s):
 - They should not be personally involved in the matter being investigated
 - Would the appointment raise any conflict of interest concerns
 - Are they likely to be influenced by people involved in the matter
 - Is there any likelihood that they may be involved in any subsequent decision making on the matter
 - Do they have good knowledge of the organisation/service area and how it operates
 - What is their availability/capacity during the investigation's provisional timeframe
 - Are they trained and/or experienced in how to conduct investigations
 - Are they able to communicate in writing and/or orally in a confident manner
 - What training or support may they require
- Certain cases may require more than one investigator (maximum three) to be involved. In such cases, a lead officer should be identified who would present findings at any subsequent hearing.
- Normally managers within the particular service area where the case arises will conduct investigations under the Council's discipline, harassment complaints and grievance procedures, unless there is a requirement for an independent investigation officer/panel*. (An independent investigation officer/team may be appointed in exceptional circumstances (after discussion with HR) in cases where there is a need for particular specialist knowledge, lack of available resource, or to ensure complete impartiality etc.)
- The key role of an investigator(s) is to conduct a fair, objective and impartial investigation.
- The Commissioning Officer should meet with the investigator(s) to ensure that they fully understand the nature of the allegations, scope of the brief, reason for recommending the witnesses, timescales and any other relevant points.
- Once the investigation has been commissioned then this should commence without undue delay

- If new information arises during the investigation, the investigator(s) may need to consider expanding the scope of the investigation, along with a review of the witnesses. In such cases, this will need to be discussed and agreed with the Commissioning Officer, along with any revision to timescales.
- A decision will need to be made as to whether suspension of the employee is necessary while the investigation is carried out or alternatively a temporary transfer to a different area of work may be an option.
- The Commissioning Officer will be responsible for oversight of the investigation and reviewing on a monthly basis, this includes considering whether suspension should remain in place (if applicable) or whether suspension needs to be initiated in light of new issues/evidence.
- In certain cases the employee may not be made aware of the allegations initially due to the nature of the allegations (eg safeguarding issues). HR advice should be sought regarding this.

1.3 Types of Investigations

a) Grievance, harassment and disciplinary matters

In cases where the investigation relates to a complaint (e.g. grievance and harassment cases) the Commissioning Officer should receive the following from the complainant in writing:

- The specific nature of the complaint and any individual allegations against any named person(s)
- A factual description of events or behaviour with details of dates, times and witnesses
- The effects on the complainant (where appropriate)
- Why the complainant is aggrieved or feels harassment has occurred (if appropriate to the case)
- Any documentary evidence or supporting witness statements
- The remedy the complainant is seeking (grievance cases only)

b) Financially related disciplinary matters

- Where concerns relate to alleged financial irregularities (e.g.: loss of stock or petty cash), the relevant department should contact the Internal Audit section immediately. The Commissioning Officer should ensure this action has been taken.
- Once notification of alleged financial irregularities has been received, together with the Commissioning Officers brief, the Internal Auditor will liaise with the relevant managers to determine whether the allegations are part of a larger investigation which might include non-financial items.
- The Internal Auditor will then inform the Commissioning Officer and investigator(s) of the areas that they will investigate which will then be incorporated into the investigation as an appendix. A manager within the particular service area where the case arises will normally conduct an investigation under the Council's discipline, harassment complaints and grievance procedures unless there is a requirement for an independent investigation officer/panel* (see above).
- The Internal Auditor may attend the hearing as a witness if necessary.
- If the matter solely relates to financial irregularities the Internal Auditor will conduct the investigation.

- c) Harassment and disciplinary matters relating to Police/professional body/safeguarding
- Concerns regarding safeguarding should be referred to the LADO for cases concerning children and the MASH for adult safeguarding without delay and advice should be sought from HR.
 - Certain matters under internal investigation may also be under investigation by the police and/or other professional body. In such cases close liaison and discussion between all parties involved will be required. Internal investigations may have to be suspended until police enquiries are completed.
 - In cases of professional conduct the professional body should be notified as appropriate.
- d) The Council's Whistle Blowing policy
- The Council's Whistle Blowing policy allows matters to be raised and investigated by a range of appropriate mechanisms including management, internal/external audit and the police using internal procedures such as grievance, disciplinary, safeguarding and/or through an independent inquiry. Internal investigations relating to employees that arise from a whistle blowing complaint should have regard to these guidelines unless there are exceptional and specific circumstances which make this impracticable.

Section 2

2.1 Conducting an investigation

The purpose of the investigation is to:

- Establish the facts in a timely manner
- Gather evidence relating to the allegations and within the scope of the brief
- Consider options for collecting the evidence (ie local agreements, policies, Code of conduct, CCTV, timekeeping/mileage sheets, personal file, witnesses)
- Consider and analyse the evidence, identifying areas of mitigation & contradiction and establish, on the balance of probability, whether there is a case to answer
- Provide a report of the findings to the Commissioning Officer and recommend whether there is a case to answer at a disciplinary hearing. The Commissioning Officer makes the final decision

2.2 Timescales

- The investigation brief includes an initial timescale for completion.
- The timescale should be appropriate to the complexity of the case and is subject to review.
- The aim should be to complete the investigation, including the report, within 3 months, however timescales set are targets and the investigator should inform relevant parties of the reasons for any delay and revised timescales.

2.3 Interview Arrangements

- It is recommended that the Investigation Officer meets firstly with the employee in order that the allegations can be put to them and their responses obtained. (Unless full details were obtained from any pre investigation meeting). Following that meeting, then the witnesses should be interviewed and finally a further interview with the employee should

take place in order that any final questions can be asked and responses recorded to any points raised by the witnesses.

- Identify who will be interviewed and send out invite letters. Template letters are located on the MRC and should be accompanied by the Investigation Interview handout.
- Allow sufficient time for each interview and plan the questions
- A room should be booked at a suitable venue
- A note taker should be arranged. Accurate notes should be taken at the interviews as this is a key part of the investigation and the notes will usually form part of the witness statement and support the management statement of case. The notes should record:
 - The date and place of interview including start/finish times and any adjournments
 - Names of all those present
 - Record of the questions asked and the responses

2.4 Rights of interviewees (employee or witnesses)

- Anyone attending a formal investigation meeting has a right to be accompanied
- The employee has the right to have the process explained to them and be clear on what the allegations are against them. The investigation brief should be shared with them and this will provide all the relevant information and assist in reducing any stress and anxiety. During the course of the investigation, if further information and witnesses are identified, and these have been agreed with the Commissioning Officer, then the employee should be informed of this, along with the reasons.
- The employee has the right to express their view in an equal and fair way and respond accordingly to any questions asked.
- The employee can refuse to answer questions in matters which are the subject of legal action.
- The employee can refuse to answer a question put to them and a record of this will be recorded in the notes of the meeting
- The employee should receive copies of any personal statements submitted as part of the process.
- Any witnesses should have the process explained to them and be informed that their statement/notes from any meetings could be shared with the employee(s) under investigation if it progresses to a hearing and they may be asked to attend in their capacity as a witness. (see Appendix 2)
- Any young person (18 and under) identified as a witness must be interviewed in the presence of their parent, carer or appropriate adult and in exceptional circumstances may be asked to present evidence at hearings with prior parental consent and will be accompanied.
- Service users may asked to participate with their prior agreement.

2.5 Conducting the investigation Interview

At the start of the meeting an investigator should explain:

- Offer right of representation and adjournment
- Who is present and why
- The role of the investigator
- The purpose of the meeting
- The need for confidentiality during the investigation

- If the case progresses to a hearing then witnesses statements will be included as part of the disciplinary pack

Investigators should:

- Present themselves in a calm relaxed way in order to put the interviewee at ease
- Do not be confrontational and talk in a raised tone
- Do not present an image that indicates you already feel the employee is guilty of the allegations
- Be aware of your body language during the interview, (i.e. raised eyebrows/nodding)
- Do not promise witness confidentiality, as the disclosure of witness statements may be required if the case progresses to a hearing
- Focus on the interview questions and bring back on track when needed
- Ask the question and allow time for the interviewee to respond
- Listening is a vital part of conducting an effective interview – summarising what the witness has said shows you have been listening and allows the interviewee to correct any inaccuracies and fill in any gaps
- When you have asked the question allow the interviewees time to think and respond
- Do not be afraid to use silence (it may prompt a reaction)
- Do not discuss your own thoughts, opinions, experiences, conclusions, conversations etc.
- Do not tell witnesses what other witnesses have said
- Ask if there is anything else they wish to add which they think is relevant to the case – this gives the witness an opportunity to disclose anything else they think might help
- Do not be afraid of asking probing/interrogative questions that challenge and test the credibility of the information, but always ask these in a professional and non intimidatory manner
- Ensure an accurate record of the interview is being taken

The following questions may assist in preparing for the investigation interview:

Open questions to help develop the facts and encourages the interviewee to open up:

- Explain exactly what occurred?
- When did it happen?
- Where did it happen?
- Who was present?
- How did it happen?
- Who else may know relevant information?
- Who did or said what?
- In what order?
- Could it have been avoided?

Closed / specific questions: *For example - What time did you leave your workplace*

Usually leads to a Yes, No or definite short answer and generally does not allow the interviewee to expand on the response. They can be helpful to gather specific facts and can help focus an overly talkative interviewee.

Probing questions: *For example - When you say she was aggressive what exactly do you mean by aggressive*

Can test the strength of an interviewee's account and challenge any inconsistencies. However, it is important to phrase these questions so they are inquisitive rather than interrogative.

Personal feelings questions: *For example – How did that make you feel?*

Can help to focus an interviewee on what is important to them and reveal their beliefs. However, they should be used sparingly as the purpose of the meeting is to establish the actual facts of a matter.

Interrogative questions:

The aim of the investigation is to establish the facts rather than interrogate someone. Although sometimes necessary, "Why" questions can make people defensive and close up, so care should be taken in the way these questions are asked.

Leading questions: *For example: "So would you say you felt ridiculed?"*

These can lead the interviewee to provide the answer the investigator hopes or expects to hear, so should always be avoided

Multiple questions: *For example: So what did you do then and why did you do it?*

This is when two questions are asked at the same time. This always leads to confusion and the interviewee may answer what they heard first, last or the part they are most comfortable answering. This type of question should be avoided.

At the end of the meeting an investigator should:

- Explain that they may need to be interviewed again and may be called as a witness should the case progress to a hearing
- Explain that the notes of the meeting will be sent out to them for their agreement and signing

After the meeting an investigator should:

- Provide the employee/witness with a copy of the notes from the meeting and seek agreement that it is accurate. (Notes should be returned within 10 days. In cases where notes have not been returned – without any explanation then the originals will be used)
- Consider the facts provided from the meetings and whether the evidence supports or contradicts the allegations
- Consider whether the meeting identified any other evidence or witnesses to be interviewed

2.6 Collection of evidence

- An employee or witness should not obstruct the investigation by refusing to attend an investigation meeting or supply relevant information whether written or verbal. The investigator(s) has a right of access to materials and individuals are required to supply this on request. HR can advise on how the Data Protection Act applies in these situations.
- The employee is required to attend the interview unless unavailable due to sick leave or pre-booked leave. Failure to attend without a legitimate reason could be viewed as failing to obey a reasonable instruction and could result in disciplinary action.
- An employee or witness who is unavailable for interview due to long term absence should be referred to the Occupational Health Unit for advice. It may be necessary to complete the investigation without having received information from those interviewed, this should be recorded in the report of the findings.
- Anyone found to be giving false evidence, wilfully preventing or delaying an investigation or colluding with others to prevent a full and fair investigation, will be in breach of their implicit contractual terms relating to trust and confidence. This could be deemed as a disciplinary matter.
- The investigator(s) may decide not to interview all of those included in the Investigation Brief and therefore should advise the Commissioning Officer outlining the reasons. Likewise, the investigator(s) may consider interviewing others not included in the brief and should obtain Commissioning Officers approval.
- The investigator(s) will need to obtain a full picture of events which may include witnesses who provide evidence in support of the subject. Once collected the investigator should objectively analyse each piece of evidence and consider:
 - Is there any admittance of guilt (it is unlikely that further investigation would be required on that point)
 - What does the evidence reveal
 - Has the employee changed their story
 - Is there any evidence of lies
 - Are there any doubts over the credibility and reliability of the evidence
 - Is any evidence supported or contradicted by evidence already collected
 - Is there corroboration from the witness statements
 - Does it suggest any further evidence should be collected
 - Has there been any collusion between the parties involved
 - Is there any mitigation
 - A conclusion based on the balance of probability

2.7 The investigation report

- The report will summarise the information and evidence gathered and consider the relative severity and weighting of this if an employee is being investigated on a number of issues (eg a safeguarding issue would most likely be more heavily weighted than lateness).

- The report will make a recommendation where appropriate as to whether there is a case to answer and this should be considered at a disciplinary hearing. In grievance cases there may be a recommendation relating to seeking to resolve the grievance.
- Should any matters arise during the course of the investigation which are not directly relevant to the case may be the subject of an addendum report to the Commissioning Officer who will decide on the appropriate course of action.
- The report should be written with the expectation that it will be seen by the employee, (if progressing to a hearing).
- The report should be able to be separated if the allegations involve more than one person.
- The report should:
 - be written in an objective style
 - avoid nicknames and jargon
 - use the same form of address for all people referenced
 - use appropriate plain language and be kept simple wherever possible
 - stick to the facts of the matter
 - be kept clear and concise
 - explain any acronyms used
 - include all evidence that was collected
 - Provide an analysis of the information obtained against the allegations
 - Include reference to any contrary evidence and mitigating circumstances
 - Include a copy of the relevant policy, local agreements, appendices and all signed witness statements
 - Include any current live warnings and provide historical details (ie spent warnings/cautions) along with the employee's current job title, grade and date of joining. A copy of the employee's job description should also be include.
 - Include an index of pages and appendices
 - Include a list of abbreviations (if applicable)
- A template report is available on the MRC and the following structure should assist in writing the report:

Introduction:

- name and job title of the person who authorised the investigation
- name and job title of the person who conducted the investigation
- a brief overview of the circumstances that led to the investigation
- the scope of the investigation and any agreed amendments (include a copy of the Investigation Brief)

Process of the investigation:

- how the investigation was conducted
- what evidence was collected
- whether any pieces of evidence could not be collected and why
- names and job titles of all witnesses and why each witness was relevant
- whether any witness could not be interviewed and why
- where a witness statement has been anonymised explain why and provide any details of enquiry into their character and background
- outline reasons for any delays in the process

The investigation findings

- summarise the findings from all relevant documents
- summarise the key evidence from each witness statement
- identify allegations which have been admitted
- include and reference corroborating evidence
- identify contrary evidence
- what facts have/have not been established
- whether there are any mitigating factors to consider
- whether there is any other relevant information to consider

Conclusion of report

- recommendation based on all evidence collected
- any other recommendations related to the matter

Supporting documents

- copies of all documents and witness statements collected and referred to in the report should be included and clearly referenced. Pages should be numbered, a copy of the relevant policy and any local agreements, or documents (ie timesheets) which have been referred to should be included.

2.8 The next stage

- The Commissioning Officer will decide whether to accept the report in full or part and may seek advice from HR.
- The Commissioning Officer may need to ask the investigator to undertake further work if necessary.
- The Commissioning Officer will determine whether the case will proceed to a formal disciplinary hearing.
- **If the case is not to proceed to a formal hearing the commissioning Officer will consider “any other recommendations made” and how these may best be communicated /actioned**
- In grievance cases the Commissioning Officer will forward the report and relevant documents to the panel considering the grievance.
- Under the harassment procedure it is necessary for the manager to meet separately with the complainant and the respondent and notify them of any recommendations. They will not receive a copy of the investigation report but a summary of the findings
- Both parties will have the opportunity to comment on the investigation (harassment).
- The manager must consider whether any further investigatory action is appropriate before proceeding as this is an opportunity to address any potential defects.
- If the case does not proceed to a formal hearing, the Commissioning Officer will arrange for the complainant and subject of the investigation to receive feedback as to the outcome. Employees should receive confirmation of this in writing.

Appendix 1 – Summary of the investigation process

STEP 1: Organisational preparation

- Decide if a formal investigation is necessary
- Establish the nature of the allegations and the scope of the investigation, witnesses and timescale for completion
- Comprehensively complete the Investigation Brief
- Choose an appropriate investigator

STEP 2: Investigator's preparation

- Familiarises themselves with the policy applicable to the case
- Meet with Commissioning Officer to discuss the case
- Identify what evidence might need to be gathered – and how to obtain this
- Make arrangements to meet with employee/witnesses
- Arrange a note taker and suitable venue

STEP 3: Handling an investigation meeting

- Plan what questions need to be asked
- Interview the employee involved at the start of the investigation (if applicable)
- Interview the witnesses
- Interview the employee again to clarify any outstanding and final points
- Advise witnesses that statements may be disclosed if the case proceeds to hearing
- Handle reluctant witnesses or refusals to meet appropriately

STEP 4: Gathering evidence

- Arrange and agree witness statements
- Collect and review any relevant written records and documents e.g. timesheets
- Collect and review any relevant and appropriate physical evidence e.g. CCTV

STEP 5: Writing the investigation report

- Plan the structure of the report (template on MRC)
- Report what is likely to have happened – the balance of probabilities
- Make a recommendation where requested

STEP 6: After an investigation is completed

- Submit the report and conclude the investigator role
- Retain the report for any appropriate period of time
- Ensure any recommendation/s unrelated to the matter are considered

- Preparation if progressing to a hearing

Appendix 2 – Handout for employee and witnesses explaining the process

Nottinghamshire County Council - Interview Under ~~xxxx~~ Procedure

The aim of any investigation commissioned by the County Council is to conduct a thorough and impartial enquiry which covers all matters of relevance to the matter under investigation.

The rights of those participating include:

1. Having the process explained to them
2. Being given the opportunity to express their own view in an equal and fair way.
3. Being appropriately accompanied and supported.
4. Refuse to answer questions on matters which are the subject of legal action.
5. Choosing not to answer any question put to them. (A record of this will be recorded in the notes of the meeting)

The interview will:

1. Be confidential
2. Allow the Investigation Officer/team to ask relevant questions
3. Responses will be recorded as a summary statement (not verbatim).

At the conclusion of the interview, the notes will be sent to the interviewee requesting them to return them within 10 days, signed and dated in agreement. If the person feels they are inaccurate, or incomplete, they may send amendments/ additions. It is the decision of the Investigation Officer/ team whether to accept these changes - if not this will be recorded as part of the process. However, it is important that the statement is accurate as it may be presented at future hearings and the interviewee may be called to give evidence on the basis of their statement.

Any interviewee should be aware that if the matter were to proceed to a formal hearing, the subject of the investigation will be given a copy of their statement and notes of the interview. At all times interviewees should have due regard to the law of slander and libel and ensure that details of any meeting are kept strictly confidential and the notes not shared with anyone except their representative.

Following the investigation a report will be written by the Investigation Officer/ team, which will be presented to the manager who has commissioned the investigation. This manager will decide what action should then be taken.

Appendix 3 - Further Guidance to Investigation Officers/team

Q1 What if an investigation reveals that a criminal offence may have been committed?

If the investigation reveals that a criminal offence may have been committed the Investigation Officer/team should inform the Commissioning Officer. Either the Investigation Officer/team or the Commissioning Officer should then contact the police and keep a written note of the outcome of such contact.

In any cases of uncertainty the Investigation Officer/team should seek the advice of the police and, there may be occasions, where the advice of the Legal Services Section would be appropriate.

Q2 What if an investigation reveals that there are safeguarding issues?

In the event of any concerns arising during the course of the investigation, child protection or child welfare issues should be referred to the LADO and concerns relating to adults safeguarding should be referred to the MASH. In addition, please also ensure that discussions take place with your HR representative without delay.

Q3 What if an employee refuses to co-operate with an investigation?

The basic principles in these guidelines make it clear that the Council expects employees to supply relevant information in relation to their investigation. Failure to do so, or willfully obstructing or colluding with others to prevent an investigation will be a serious breach of their employment contract and may result in subsequent disciplinary action. At the same time individuals have a right to be advised by their representatives and have regard to any legal implications arising from answering specific questions put to them.

Q4 What if an employee fails to turn up to meet an Investigation Officer/team?

The Council expects that its employees will co-operate with investigations which are formally established under these Guidelines. There will be occasions where someone is unable to make an appointment through ill-health, family emergencies etc. In such circumstances the Investigation Officer/team will seek to make a new appointment.

Where the Investigation Officer/team feels that an individual is **deliberately** avoiding a meeting then the answer to Q3 will apply.

Q5 What if an employee states they cannot meet the Investigation Officer/ team through ill-health/stress etc?

Where ill-health/stress prevents an employee meeting an Investigation Officer/team, then the Investigation Officer/team will consider one or more of the following:

- a) rearranging the appointment after the employee's return to work if the likely timescale is short.
- b) with employee's agreement, see them at a work or other location, whilst absent from work.
- c) seeking advice from the employee's medical adviser and/or the Council's Occupational Health Service regarding the likely period of absence.
- d) sending the employee (and their representative) a list of questions and seeking written answers.
- e) meeting with their representative in order to obtain the information required.

Q6 What if a witness wishes to give their evidence anonymously?

Wherever practicable the Investigation Officer/team should encourage witnesses not to give their evidence anonymously. Should the matter proceed to disciplinary action then the value of the witness' evidence may be reduced where it cannot be tested through cross examination.

However there will be occasions where witnesses are fearful of victimisation, especially where they are giving evidence against their manager or supervisor. In such cases the Investigation Officer/Team:

- a) may be able to protect the witness by writing their report in such a way that their evidence is presented anonymously.
- b) can have regard to the guidance given in the case of *Linfood Cash and Carry v Thomson*. The Appeal Tribunal advised:
 - (i) that a careful balance must be maintained between the protection of informants who are in genuine fear and providing a fair hearing for the employee.
 - (ii) The information given by the witness can be reduced into writing in one or more statements and initially these should be taken without regard to the fact that, in cases where anonymity is to be preserved, it may subsequently prove necessary in order to preserve anonymity, to omit or erase certain parts before submission of others.
 - (iii) In taking statements it may be important to include – date, time and place of each observation or incident; the opportunity and ability to observe clearly and with accuracy; the circumstantial evidence such as knowledge of the system or arrangement, or the reason for the presence of the informer and why certain small details are memorable; whether the witness has suffered at the hands of the accused or has any other reason to fabricate, whether from personal grudge or any other reason or principle.
 - (iv) Further investigation can then take place to either confirm or undermine the information given – corroboration is clearly desirable.
 - (v) Tactful inquiries may be advisable into the character and background of the witness and any other information which may add or detract from the value of the statement.

Even if the investigator is satisfied that the fear is genuine the advice from *Linfood Cash and Carry v Thomson* would indicate that it is highly desirable that the Investigator should interview the witness and be satisfied about the weight to be given to the statement. If this is not done at the investigation stage it may need to be done in any subsequent disciplinary hearing, by the person conducting the hearing, to ensure that a fair process has been followed.

If any witness statements are being given to the accused during the investigation, it may be appropriate to give the employee, and his/her representative, a copy of this witness statement with omissions to avoid identification.

It may be necessary for the Investigator to follow up with the witness points being made by the employee and/or their representative on their evidence.