

MANAGING INVESTIGATIONS TOOLKIT

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As part of our focus on diversity and inclusion, BDAT pledges that our policies will seek to promote equality, fairness, and respect for all staff and students. Our policies reflect the BDAT ICARE values of inclusion, compassion, aspiration, resilience, and excellence. By working closely with a range of stakeholders, such as our school, recognised trade union, and HR colleagues, we have ensured that BDAT's policies do not unlawfully discriminate against anybody.

1. Introduction

The Managing Investigations Toolkit aims to provide a framework which may assist academy/central team senior leaders in carrying out a fair and consistent investigation into allegations of misconduct under the Disciplinary Policy and Procedure or complaints made under the Complaints Policy or Staff Complaints and Grievance Procedure. This document offers best practice guidance to academy management and governors on dealing with the practicalities of carrying out investigations.

The guidance contained within this document should be used in accordance with the above policies or any other relevant Trust/Academy policy of procedure as determined by the nature of the issue under investigation. It is non-contractual guidance and the Academy may depart from its terms at any time.

This guidance is ordinarily used in conjunction with the following policies and guidance;

- Disciplinary Procedure
- Complaints Procedure
- Staff Complaints and Grievance Procedure

This document is a practical guide to academies and the central Trust office on undertaking investigations. Managers are strongly advised to contact Human Resources prior to undertaking an investigation related to staff; Human Resources are available to advise the Investigating Officer (Head Teacher/Principal, Deputy Head Teacher, Assistant Head Teacher or Governors) at all stages of the process. For all other complaints, then contact with the Director of Corporate Affairs is advised.

The investigating officer's role is to investigate the facts of the case and to try and establish what may have happened, not to advise a course of action.

This policy has been provided as a Trust level resource for BDAT and does not form part of an employee's terms and conditions of employment.

When should an investigation be conducted?

An investigation may be required in the following circumstances (not exhaustive);

- Allegations of misconduct
- Allegations of bullying / harassment / discrimination
- Dealing with staff member complaints/grievances
- Dealing with all other complaints

If there is an occasion when a staff member or volunteer's conduct may lead to disciplinary action. A fair investigation will be undertaken that is consistent with the guidance that is provided within this document, and in line with the Disciplinary, Staff Complaints and Grievance, and Complaints Policies.

2. The Investigation

Often, before a formal investigation commences, staff members and volunteers may be asked to provide an account of events in response to an allegation. Where possible, school or Trust leaders will ask the relevant staff members or volunteers to make a clear note of what has happened on the day that it occurs, particularly where there are safeguarding implications. Staff members and volunteers should be advised that they may wish to seek trade union advice prior to submitting their account. Staff members and volunteers will be expected to co-operate with such requests or instructions to provide information that may be used as part of a management fact-find or informal investigation.

Often this fact-find will determine whether a formal investigation is necessary or appropriate. Evidence obtained within this fact-find may subsequently be utilised as part of the formal investigation.

Who Should Investigate?

- When it is decided that a formal investigation is appropriate, school/Trust leaders or governors/Trustees should determine who will be the Investigating Officer. If it is likely that the investigation may result in a disciplinary or grievance hearing, where the Head Teacher/Principal/CEO may hear the case, it is advisable that an alternative member of the school senior leadership team/Trust executive team or an external investigator is commissioned (in exceptional circumstances) in order to conduct the investigation. This person will have been appropriately trained.
- If it is likely that the investigation may result in a disciplinary or grievance hearing, where the governors/Trustees may hear the case, it is advisable that the Head Teacher/Principal/CEO, an alternative member of the senior leadership team/Trust executive team or an external investigator is commissioned in order to conduct the investigation.
- If the Head Teacher/Principal/CEO or senior member of staff is a key witness, or has key or intimate knowledge which could be seen to prejudice the investigation, it may not be appropriate that they conduct the investigation, present the case at a hearing or hear the case. (Please contact Human Resources for further advice).

External Investigators

The academy/central Trust may also contact Human Resources with a view to commissioning an external investigator in exceptional circumstances. If an external investigator is commissioned, they will report to the Head Teacher/Principal/CEO. If the investigation concerns the Head Teacher/Principal/CEO, then the external investigator will report to the nominated governor/Trustee that will retain responsibility for the case. This is outside the agreed SLAs and will be at an additional cost to the academy/central Trust.

The Investigator should liaise with the Human Resources for advice on procedural matters and to keep the Human Resources apprised of developments in the case.

The final report shall be the joint property of BDAT and the Governing Body of the Academy/Trust Board.

How to conduct the Investigation

Principles of conducting an investigation

- The investigation should be free from bias and meet the requirements of natural justice. All allegations should be put to the staff member or volunteer and they should be allowed to respond. Evidence both for and against the allegation should be sought including mitigating factors.
- At all stages of the process, confidentiality must be maintained by all parties.
- A timescale will ordinarily be provided at the beginning of the investigation to all parties concerned and every effort should be made to achieve this. This may be varied by mutual agreement.
- The Investigating Officer may choose to record the meetings with the consent of the employee or to have notes taken (at the discretion of the Investigating Officer). No covert recordings are to be made by any party.

Meet the Member of Staff or Volunteer

The member of staff or volunteer whom the allegation/complaint is against will receive a written invite to the meeting at least five days before it is due to be held and the invite should at least provide the 'headline' reason(s)/allegations including the dates and or times of the alleged occurrences and thus the reasons for the interview. It should also remind them of their right to be accompanied by a trade union representative or a work colleague. The invite letter should be sent by recorded delivery and ideally by email also to ensure the respondent receives the invite letter and that the school/central Trust have a record of receipt. A copy of the relevant policy should be attached/enclosed with the invite letter to provide the respondent with the opportunity to familiarise themselves with the procedure and expectations. There is no need for all evidence to be provided to the member of staff or volunteer before the investigation interview. However, the member of staff or volunteer should be given the opportunity to comment on all evidence during the investigation process and at the initial meeting without exception.

Before commencing the investigation

The Commissioning Officer should:

- Identify details of the precise issue to be investigated, e.g. details of allegations/complaint made etc.
- Agree the methodology for conducting investigations, e.g. identification of initial witnesses, copies of policy being breached etc.
- Agree the academy policy or procedure under which the investigation is being conducted.
- Clarify what purpose and by whom any Investigation Report will be used i.e. investigate the facts of the case and try and establish what may have happened.

Investigation Interviews

Preparation for the investigation interviews

The Investigating Officer should:

- Ensure that enough time has been set aside to hold the interview confidentially, in a private room that is available without any interruptions.
- Ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures and details of the allegations etc.
- Prepare a list of clearly structured and focused questions in relation to the alleged incident / allegation
- Ensure that an appropriate person is available to take detailed notes of the meeting, for use within the investigation process / report where appropriate.

Conducting the Investigation Interviews

Interviews should be conducted in the following order:

- The person raising the allegation/complaint should be interviewed first
- Witnesses should be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses may be identified during the investigation and must also be interviewed.
- The person whom the allegation/complaint is against should be interviewed last
- Care should be taken to avoid any opportunity for collusion

When interviewing children that may be involved as witnesses please refer to Human Resources for advice.

The structure of the investigation interview

- Explain the context of the interview.
- For what purpose the meeting notes and subsequent record of interviews will be used
- How and when the interviewee will be able to check the notes /record of interviews
- Reiterate the importance of confidentiality

The interview itself is to ascertain facts and there may be times when a series of specific questions requiring specific answers may need to be put to interviewees. Clear, precise, and closed questions may be used to probe answers to establish the facts. The interviewer should avoid any speculation or opinion.

Introductions & Greetings

To the person being interviewed (including the individual who is the subject of the allegation and witnesses), explain:

- *The procedure to the interviewee and try to put them at their ease.*
- This is part of a formal process, their evidence may be used if the matter proceeds to a hearing and they may have to be called as a witness
- They will be given a copy of their final record of interview and have the opportunity to identify/annotate and submit any points of disagreement
- The member of staff or volunteer being investigated will have the right to know who is making the allegation/complaint (or providing information about the matter). The member of staff or volunteer being investigated will also receive a copy of the record of interview should the matter proceed to a hearing
- This matter is strictly confidential and must not be discussed at any stage. Reassure the interviewee that management will also strictly maintain confidentiality.
- Evidence that these steps have been followed should appear in the record of interview

Taking a record of interview from the member of staff or volunteer (including the individual who is the subject of the allegation and witnesses)

Explain that:

- This is part of a formal process

- The allegations/complaint against them may proceed to a disciplinary hearing, and the potential outcomes in the case of the individual who is the subject of the allegation.
- They will be given a copy of their final record of interview and the opportunity to make comment on it e.g. any points of disagreement.

Questioning

- Use closed questions in order to clarify points (who, what, why, when, how etc). Leading questions should be avoided when interviewing witnesses
- Discuss and enquire into any additional information for clarification
- Ensure that specific examples (including times, dates, witnesses, specific actions) are provided when unsubstantiated descriptions are given, i.e. 'bullying' or inappropriate behaviour' etc
- Ensure that the interviewee has the opportunity to offer any other information deemed relevant to the investigation
- Where physical force is alleged to have been used, then the degree of force used should be clarified

Closing Statement

- Explain the next steps, confirming how / when the record of interview is to be prepared and verified and when the investigation is expected to be completed.
- Ensure that contact details of the Investigating Officer are provided, and ensure confidentiality is fully understood.
- Thank them for their time.

At the end of the investigation interview the Investigating Officer should have obtained from each witness:

- The names of those present or involved
- Date / time / place of the alleged incident / allegation
- Details of what took place, and the order in which they happened

Records of Interviews

- Any notes taken during the investigation interviews should be typed, checked and signed by the interviewee. The record of interview should record the facts, written (within reason) in the language used by the interviewee following the train of events.
- If there is any ambiguity or gap in the account these should be clarified with the interviewee during the meeting.
- Once the record of interview is typed, the staff member should be allowed sufficient time to read it through, make any amendments/additions as necessary and sign and date the record at the bottom of each page. Any amendments should be initialled. Where possible it is advised that the record is typed and signed as soon as the interview has been completed. Should the interviewee refuse to sign the statement (or make amendments that are not agreed) then both versions (original and amended) may be utilised by the Investigating Officer.

Evaluating the Evidence

All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report. This should include;

- Any record/notes of interviews
- CCTV if applicable
- Reference to appropriate and relevant policies & procedures

This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider. The following points should be considered:

- Direct witness evidence will usually be stronger than indirect information relating to the incident / allegation
- Evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable
- Anonymous evidence should be considered with great caution as it is often difficult to substantiate
- Consideration should be given to any bias, motivation or influence individual witnesses may have
- Where possible, the factual accuracy of points raised in records of interviews should be verified by the Investigating Officer if they are material to the allegations/complaints. This will take place following any interviews.

It is important to remember that in reviewing the evidence, the Investigating Officer only has to show they have a **reasonable belief** of what happened based on their assessment of the evidence. Unlike a legal case there is no requirement to prove a case 'beyond reasonable doubt'. At no point will the Investigating Officer be helped or encouraged to make assumptions or assertions.

The investigating officer's role is to investigate the facts and not to advise a course of action. The investigating officer will compile an investigation report, consisting of page numbers, a contents page, appendices, etc. This will then be shared with the commissioning officer who will decide on the next steps.

Appendix 1 – Table from Staff Complaints and Grievance Procedure

The Trust has delegated the following powers to hear grievances to the following levels (or above) of staff:

Member of staff the complaint refers to:	Complaint to be sent to (Commissioning Officer):	Complaint investigated by:	Decision maker	Appeal to:
Member of Academy staff including teacher, support staff etc	Academy Principal / Head teacher	SLT as delegated by Principal/Headteacher	Academy Principal / Head teacher	Local Governing Body (LGB)
Head teacher / Head of School / Principal / Governor	Chair LGB	Member of the Executive Team or an independent investigator or a governor as agreed with BDAT CEO)	Chair of LGB	Education Director
Executive Principal	Education Director	Member of Central Education Team as delegated by Education Director or an alternative Member of the Executive Team	Education Director	CEO
BDAT Central Team (not Executive)	Line manager or a member of the BDAT Executive	Member of Executive Team	Line Manager or member of the BDAT Executive	CEO
BDAT Executive Team	CEO	Trustee	CEO	Chair of Trust Board
Chief Executive Officer (CEO)	Chair of Trust Board	Trustee(s) delegated by Chair of Trust Board (excluding the vice chair in case of appeal) or an independent investigator	Chair of Trust Board	Vice chair of Trust Board
Chair of Local Governing Body	Clerk to LGB	Member of Executive Team as delegated by CEO	CEO	Chair of Trust Board
Chair of Trust Board	Clerk to Trust Board	As agreed with CEO – external	Chair of Trustee Panel	Chair of Trustee Appeal Panel

In all cases BDAT reserves the right to appoint an independent investigator. Charges or fees will apply to the academy where the staff member/volunteer works

