

# Investigation Policy

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## **1. Introduction**

Carmarthenshire County Council undertakes internal investigations in response to a range of incidents and events. This policy lays down the procedure to be followed when an internal investigation requires witness statements from staff as part of an investigation or from those who are or may become the subject of the investigation.

This policy is to ensure that all investigations are carried out promptly, in a fair manner to the individuals concerned, allowing individuals to respond to the allegations made against them. It also respects their rights to confidentiality and explains the role of the companion at the informal investigation stage.

## **2. Scope**

This procedure covers all employees including centrally employed school staff but excluding staff on the complement of locally managed schools.

This policy is intended to cover all internal investigations however they arise, e.g. disciplinary, capability and grievance; whistle-blowing disclosures; allegations of fraud; harassment or bullying; investigations as a result of an incident/accident reported on an Accident and Incident Form; investigations arising from Road Traffic Accidents involving council vehicles.

This policy is to ensure that if it subsequently becomes necessary for formal procedures to be invoked against an employee either internally or externally, the statements taken as part of the investigation may be used in this process. This is intended to avoid the need for employees to be interviewed more than is necessary and to ensure matters which may later be the subject to formal procedures, is documented as soon as possible after the event.

## **3. Procedure**

### Purpose of the investigation

The objective of an investigation is to obtain all relevant information to establish the facts of the case. This will include interviewing the employee(s) being investigated and all relevant witnesses, taking statements or notes of meetings, obtaining documentary evidence, e.g. employment records, and contacting outside agencies, bodies and individuals as appropriate.

### Appointing an investigating officer

An investigation officer will normally be appointed by the Director or nominated Head of Service in accordance with the relevant policy\* (see below). Who should be the investigator will often depend on the seriousness and/or complexity of the matter.

In the majority of cases, where the matter to be investigated appears to be clear and the facts are not in dispute, the role of the investigator may be carried out by an appropriate line manager.

If the evidence to be investigated is more serious or complex (such as potential gross misconduct, discrimination or bullying) then the person appointed should be someone more senior or experienced where possible.

In exceptional circumstances, it may be appropriate to appoint someone who is detached from the matter. This could be a senior manager from another department or an external investigator. However this needs to be carefully considered and any decision should balance the needs for fairness against a cost effective and efficient investigation.

Questions to consider when choosing an investigator

- Are they 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?
- Might they be involved in any subsequent decision making on the matter?
- What is their availability during the investigation's provisional time-frame?
- Are they trained and/or experienced in how to conduct investigations?
- How confident are they at communicating in writing and/or orally?
- What training or support may they require?

What is most important is that whoever is chosen to be the investigator acts fairly and objectively.

\* Any case of suspected fraud or corruption by any officer or member of the Council must be reported immediately to the Head of Audit Risk and Procurement. Where cases are logged on the Whistle Blowing Database, the Monitoring Officer will be responsible for formally referring the case to the Head of Audit Risk and Procurement. No internal investigation should be attempted by any Department. The Head of Audit Risk and Procurement will arrange for the necessary investigation to be carried out. Where, as a consequence of the investigation, there appears to be reasonable grounds to indicate that an officer has been guilty of fraud or corruption, the Head of Audit Risk and Procurement will discuss the matter with the Director of Corporate Services who will be responsible for deciding whether the matter should be formally referred to the Police.

Where cash or items are stolen, all such incidents, regardless of value, should be referred to Internal Audit prior to reporting to the Police. If it is suspected that a member of staff may have been involved in the theft advice must also be sought from an HR Advisor.

#### **4. People Management - HR Advisor**

Once an investigating officer has been appointed an HR Advisor will be allocated to advise and support the investigation officer by the Assistant Chief Executive (People Management) or a nominated representative, who will liaise with Internal Audit as required.

## **5. Employee responsibilities**

In line with the general requirements outlined within the statement of main terms and conditions an employee 'may reasonably be required' to provide factual statements and comply fully with the internal investigation process and any subsequent procedures as outlined below:

"...You will be held responsible for ensuring that the accountabilities of your post (Job Profile available on request) are fulfilled and your performance in doing so may be assessed from time to time. You will carry out such work and duties as are usual or necessary in connection with your appointment or such work as may reasonably be required. You are required to invoke the Council's/School's established processes and procedures to challenge and report dangerous, abusive, discriminatory or exploitive behaviour and practice. You will be responsible for your own actions, behaviour and any subsequent consequences. All employees are expected to recognise the limits of their competence and be responsible for limiting their actions to those which they feel competent to undertake. You will have due regard for economy and use of resources whilst maintaining standards at all time."

The investigation officer will be responsible for ensuring that the employee under investigation has every opportunity to respond, taking into account the nature and severity of the allegations. In the event that the employee fails to respond the investigation officer will proceed on the basis of the information available. Failure to co-operate with an investigation without a valid reason may lead to disciplinary action.

## **6. Sickness absence during an investigation**

Absence from work through sickness does not necessarily mean that an employee is unfit to give a statement. It may be necessary to seek the advice from an Occupational Health Advisor (OHA) or Occupational Health Physician (OHP) to assess the employee's fitness prior to being interviewed. The employee will be asked to consent to the release of information by the OHA/OHP after the referral. In cases where an employee is considered unfit by the Council's OHA/OHP to be interviewed or to make a statement, they will be entitled to nominate a recognised trade union representative or a work colleague to speak on their behalf or to submit a written statement. In the event that the employee fails to attend the occupational health appointment or declines to give consent to the release of information, a decision will be made to proceed on the information available.

## **7. Notification of an investigation**

Any employee who is to be interviewed as the subject of an investigation should to be given details of the reasons for the investigation at the outset. The employee concerned must be informed in writing that an investigation is to be carried out and the subject of the allegations(s). This should be done within 3 working days of the decision to conduct an investigation and a copy of the investigation policy enclosed. If in the course of the investigation further allegations come to light which form part of

the investigation then the employee must be made aware of this in writing as soon as this becomes apparent.

In cases where it is not immediately apparent whether actions are likely, an employee who is later identified as possibly facing action must be advised in writing as soon as it becomes apparent.

## **8. Representation**

Whether an employee has the right to be accompanied at an investigation meeting will depend on the circumstances:

Disciplinary investigations – There is no statutory right for an employee to be accompanied at a disciplinary investigation meeting (for example, a meeting held to gather facts). The right only applies to a disciplinary hearing which could result in a formal warning or some other action being taken or confirmed against a worker. The Authority's disciplinary policy does however allow for an employee who is the subject of an investigation to be accompanied by a suitable companion (independent of the investigation) at the investigation stage. A companion can be a trade union representative or a work colleague. The employee will be given an appointment with reasonable time to arrange such support. (Please refer to the [Role of the Companion](#) in Disciplinary and Grievance Process)

In situations where it appears to the investigating officer that there is an unreasonable delay of more than 7 calendar days in seeking a companion, the investigating officer can insist on an interview and offer an independent person as an observer.

Grievance investigations - An employee who raises a grievance has a statutory right to be accompanied at any meeting held to hear, gather facts about, discuss, consider or resolve their grievance. This includes investigation meetings.

However, any other employee interviewed as part of the investigation into a grievance, (for example, to check facts or gather new evidence) does not have a statutory right to be accompanied at the investigation meeting.

## **9. Recording an investigation meeting**

An interviewee who makes a statement as part of an investigation will be required to sign the statement as a true record, having the opportunity to amend it with the agreement of the investigation officer and to add further information. Ideally this should be undertaken at the end of the investigatory meeting. It may also be sent out to the interviewee following the meeting for agreement. An interviewee should be allowed to amend their statement but should sign any amendments they make to the original document. Where changes are made to a statement that the investigator believes contradict what was said at the meeting, it may be necessary to note this and include both the original statement and the amended statement in the report.

If an interviewee refuses to sign their statement, an investigator should try to find out why and resolve the issue. If a resolution cannot be reached, an investigator should

include the statement in their report while acknowledging that the interviewee refused to confirm that it was an accurate reflection of the meeting.

The Authority does not record disciplinary meetings/hearings using an audio device. At the same time, the Authority, does not normally permit the recording of disciplinary meetings/hearings by an employee (or his/her representative/support), given the sensitive and personal data which may be discussed. A covert recording of an investigation meeting may be viewed as a misconduct matter or as a breach of trust and confidence.

An investigator may sometimes decide that a witness statement can be obtained in writing without holding a meeting in circumstances such as:

If the witness is not a employee

when the facts required from a witness are very simple

where a witness is ill and unable to attend an investigation meeting .

An investigator should provide a reasonable deadline for completion and ask the witness to answer specific questions or to include in their statement:

- Their name, and where applicable, job title
- The date, place and time of any relevant issues
- What they saw, heard, know
- The reason why they were able to see, hear or know about the issues
- The date and time of the statement
- Their signature.

A witness statement supplied in writing will be of limited use where there are doubts about the witness account or the witness needs to be probed for further details.

## **10. Timescale**

It is not possible to be prescriptive about the time taken to undertake an internal investigation. However, investigations should aim to be completed within 28 calendar days wherever possible but this is dependent on the complexity of the case. If this is not possible the investigating officer will inform all parties of the delays, the reason for the delay and the likely date of completion of the investigation.

In the event that contradictions come to light during the investigation the investigating officer should ensure these are clearly identified and attempts made to determine why these have arisen and resolved where possible. The investigating officer will in these circumstances re-interview employees at the investigation stage rather than the contradictions coming to light during a hearing.

On completion of the investigation, the Investigating Officer will provide the investigating report with recommendations to the Commissioning Manager.

It is the Commissioning Manager's responsibility to consider the investigation report and recommendations and determine if any further action is required. The Commissioning Manager is responsible for communicating the recommendations to the employee within 7 calendar days of completion of the investigation and where appropriate makes arrangements for convening a disciplinary hearing.

### **11. Support for employees**

An investigation can be stressful for everyone involved. Sometimes it can lead to significant distress and negatively impact the mental health of an employee.

Where concerns about the mental health of an employee are raised, an investigator should treat the issue seriously and consider whether the process can be adjusted in some way. For example, by allowing the employee to be accompanied at any investigation meetings by a support worker, personal friend or family member who is aware of their mental health issues.

All employees who are taking part in an investigation, either as the subject, or as a witness, may seek support from the Occupational Health Unit.

### **12. Confidentiality**

Confidentiality during an investigation is of the utmost importance so as to maintain the integrity of the evidence and the respect of the individual being investigated. It is essential that the investigating officer does not disclose more information than is necessary to assist the investigation process with any individual.

It is also necessary to impress upon any witnesses the need to maintain confidentiality, and it is a disciplinary offence in itself to breach that confidentiality.

The investigating officer is not to discuss the case with anyone other than those involved in the case. Employees must also be informed of the confidentiality in all cases.

### **13. Ensuring equality of treatment**

All employees are required to adopt a positive, open and fair approach and ensure the Authority's Equality and Diversity Policy is adhered to and applied consistently to all irrespective of race, colour, nationality, ethnic or national origins, disability, religion and belief or non-belief, age, sex, gender reassignment, gender identity and gender expression, sexual orientation, pregnancy or maternity, marital or civil partnership status.

In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favorably than the English language' and this principle should be adopted in the application of this Guidance.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly.

If you require this publication in an alternative format please contact People Management on 01267 246184 or email

[PMBusinessSupportUnit@carmarthenshire.gov.uk](mailto:PMBusinessSupportUnit@carmarthenshire.gov.uk)

## **Appendix 1**

### **Guidelines for Investigating Officers**

#### 1. Introduction

It is sometimes necessary to investigate certain matters involving staff and you being nominated as the Investigating Officer. These matters may range from disciplinary, capability or, grievance claims; whistle-blowing disclosures; allegations of fraud; bullying or harassment; investigations as a result of an incident/accident; investigations arising from Road Traffic Accidents involving council vehicles or any matter where there is a need to establish the facts and ascertain whether there is a case to be answered following investigation.

If you are asked to investigate a matter, you may seek advice and support from the HR Team and must read the following guidelines carefully. You must declare at that time if you feel it is inappropriate for you to undertake the investigation, if for example, the matter involves a close friend or if you have had some previous personal and/or working relationship difficulties with the person who is subject to the investigation.

Investigations should aim to be concluded within 28 calendar days. An investigation must take priority over all other work commitments.

These guidance notes should be read in association with the relevant Authority policy (e.g. Whistle-blowing, Disciplinary, Grievance, Behavioural Standards etc.).

#### 2. Confidentiality

Confidentiality during an investigation is of the utmost importance so as to maintain the integrity of the evidence and the respect of the individual being investigated. It is essential that the investigating officer does not disclose more information than is necessary to assist the investigation process with any individual.

It is also necessary to impress upon any witnesses the need to maintain confidentiality, and it is a disciplinary offence in itself to breach that confidentiality.

The investigating officer is not to discuss the case with anyone other than those involved in the case. Employees must also be informed of the confidentiality in all cases.

#### 3. Prior to the Investigation

Be clear about what is expected of your role and agree the terms of reference with the Commissioning Officer before starting the investigation (See Appendix 2).

It is usual for the Investigating Officer to undertake a thorough investigation into the facts, prepare a report with recommendations on the findings and attend any hearing to present the outcome of the investigation to the panel. In disciplinary investigations your role is to establish whether there is a case to answer. In other circumstances you may be asked to investigate only a particular element of a complaint or grievance. If you are not sure of your remit – ask!

If your investigation stems from a complaint made by a customer or service user establish if it has been recorded with the Complaints Team.

#### 4. Plan the investigation

Ensure you allow time to adequately plan your investigation using Appendix 3:

- Clarify the allegations or complaint. Usually the first person you should interview is the complainant.
- Identify the HR Advisor who will provide advice during the investigation
- Decide what facts need to be established and continually review.
- Decide which witnesses need to be interviewed and in what order in line with the relevant procedure, e.g. disciplinary policy
- Timetable the interviews ensuring that there will be adequate time to re-interview witnesses if more information comes to light.
- Decide what documentary evidence is needed – this may include employment records, training and supervision records, policies and procedures etc.
- Ensure that you are complying with the requirements of the appropriate policy.
- Identify administrative support to assist you to undertake the investigation from the relevant Department.
- Estimate a timeline for the conclusion of your investigation

#### 5. Familiarise yourself with relevant Policies and Procedures

It is important that the rights of employees are protected whether it is the employee being investigated or an employee who has made a complaint or taken out a grievance.

An investigator should collect copies of any policies and procedures that may be relevant to the matter. Even if the investigator is already aware of the policies, they should re-read them to refresh their knowledge and ensure the correct procedures are followed whenever required.

For example: Kareem is asked to conduct an investigation into a grievance that contains allegations of race discrimination. He re-reads the Authority's grievance and disciplinary Policies to refresh his knowledge and to ensure that he conducts the investigation as required.

He also collects the Authority's Equality and Diversity policy because it may be important when considering if there is a case to answer regarding the allegations of race discrimination.

The investigation may fall within the scope of one or more of the following areas:

- Disciplinary
- Grievance
- Capability
- Behavioural Standards
- Whistle Blowing
- Financial irregularities (in association with the Director of Resources)
- Accident/Incident investigations

All relevant policies are available to view in the HR/H&S section of the Intranet site.

## 6. Starting the Investigation

You should make your HR Advisor aware before starting the investigation. The investigation should take priority over your other workload and undertaken and completed as quickly as possible. The employee will be notified in writing by their line manager of the investigation and the reason for it and that they have appointed you as the investigating officer. The employee who is the subject of the informal investigation must also be advised that they can request to be accompanied by a suitable companion at the informal investigation stage.

The Head of Audit Risk and Procurement must be informed immediately you become aware of any financial loss (e.g. theft, fraudulent travel claims, staff being paid for hours not worked etc.)

## 7. During the Investigation

Arrange to interview all parties involved promptly to ensure that the recollection of events is still clear using the template at Appendix 4 to record the discussion. Obtain all relevant information including witness statements and other documents.

The investigation should be completed within the estimated time period. If for some reason this is not possible it is the investigating officer's responsibility to advise all parties and their representatives, along with the HR Advisor of this and agree a date for the completion of the investigation.

## 8. Interviewing Witnesses

Where a large number of people witnessed the same incident, it will usually not be necessary to interview everybody. An investigator should interview some of the witnesses. If their accounts are consistent then an investigator may not need to interview other witnesses unless there are good reasons to believe they might have further information on the matter.

For example:

Satnam is investigating a dispute between two employees that happened during lunch in the staff canteen. Around 20 people were in the canteen at the time but Satnam decides that initially she will only interview the two people involved in the dispute and four witnesses to see if a consistent version of events is found.

While the two employees involved in the dispute have a differing version of events, all four of the witnesses give a very similar account. Satnam decides that she does not need to interview any of the other employees who were also present.

Ensure that all employees who are to be interviewed are advised in writing that they are invited to an informal investigatory meeting in line with the appropriate policy, e.g. Disciplinary, Grievance, etc.

Witnesses should be informed at the beginning of the interview that an accurate but not verbatim record of the investigatory interview will be made, signed by the employee and retained by the investigating officer, i.e. a reasonable summary of the main points of the meeting with key responses to questions from the interviewee highlighted in italics. If the information provided by the witness during the meeting is relevant to the investigation and likely to be presented at a disciplinary hearing the witness should be advised that s/he may be called as a witness, and if this is the case s/he is obliged to attend for which s/he would be given appropriate support.

All statements should be taken in line with the template at Appendix 4. The relevant Department is responsible for providing you with appropriate administrative support to record the interview and compile the statements.

You should make sure that you

- Plan the interview in advance
- Be courteous, no matter how serious the allegations are
- Make sure that there are no interruptions and that phones are diverted etc.
- Do not lead the witness – let them tell you what happened in their own words

- The interview must not develop into a hearing where a verdict is reached.
- Obtain signed and dated witness statements from all parties involved.
- Any hand written notes should also be kept.

## 9. Preparing the Report

Once you believe that the facts have been established as far as is reasonably possible and appropriate, you will need to produce an investigation report that explains your findings.

An investigation report should cover all of the facts that were and were not established, and whether there were any mitigating circumstances that also require consideration.

To exclude any information may leave an investigation open to accusations of bias and filtering evidence to suit their findings.

The report should reflect the investigators own conclusions. While an investigator may seek advice from a third party such as HR, the conclusions should be their own.

Example attached as Appendix 5. If there are contradictions it is best to highlight them, as they may need to be probed further at any potential disciplinary hearing.

For disciplinary investigation reports you must present the information in a logical sequence so that all involved in the hearing can find their way through it easily. Everything should be cross-referenced and indexed. You should include:

- A contents page
- Terms of reference of the investigation
- A written chronological summary of the case and including details of reasons and timescales for any delays in the investigation process
- The letter calling the employee to the disciplinary hearing
- The investigation report indicating whether there is a case to answer and any recommendations.
- A detailed summary of the allegations (this may already be included in one of the above)
- Witness statements (signed) or anonymous, if appropriate
- Details of any relevant existing warnings. (Time expired warnings must not be included)
- Copies of all policies or procedures referred to e.g. whistle-blowing, disciplinary procedure, behavioural standards procedure, codes of conduct

For ease of use, a hard copy of all documents should be presented to the Commissioning Officer on completion. Where the report refers to documents, these will need to be included and appendicised for ease of reference.

It is the Commissioning Officer's responsibility to consider the findings of the Investigating Officer and to make the necessary arrangements for convening a Disciplinary Panel (if appropriate) or actioning other recommendations, in conjunction with the HR Team. The disciplinary investigation report and appendices must be available to be sent out with the disciplinary letter calling the employee to the hearing. This must be sent at least 14 calendar days before the disciplinary hearing.

The report must:

- Relate as far as possible only to the matter of the disciplinary investigation
- Be objective and non-judgemental
- Maintain confidentiality
- Be prepared to reveal any management shortcomings which can come to light during an investigation
- Indicate the type of misconduct involved (serious, gross, professional etc.)

#### 10. Reporting what is likely to have happened

While reporting with absolute certainty on a matter is desirable it will often not be possible to do so therefore an investigator should arrange their evidence into:

- Uncontested Facts: where the facts are not in dispute, they can simply be reported as factual.
- Contested Facts: where the facts are contested or contradictory they should determine what, on the balance of probabilities, took place (see below).
- Unsubstantiated claims: where an investigator is unable to substantiate an allegation they should consider if further investigation is reasonable or report that they are unable to draw a conclusion.

#### 11. The balance of probabilities

An investigator should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. In these circumstances an investigator will need to decide whether, on the balance of probabilities, they could justifiably prefer one version of the matter over another and explain why.

Unlike criminal law, an investigator conducting an employment investigation does not have to find proof beyond all reasonable doubt that the matter took place. An investigator only needs to decide that on the balance of probabilities an incident is more likely to have occurred than not.

The employee and their representative will be given a copy of your report and any accompanying appendices if the investigation proceeds to a formal disciplinary hearing.

If no further action is to be taken you will be responsible for informing all witnesses that you interviewed that there will be no further action.

The Commissioning Officer who received your report is responsible for informing the member of staff who was the subject of the investigation.

It is important that the Investigating Officer and Commissioning Manager co-ordinate the timing of feedback to witnesses and the member of staff subject to the investigation to ensure wherever possible that this is done at the same time

If the case continues to a disciplinary hearing then your report and accompanying appendices will be used as the Statement of Case.

## 12. Recommendations

You should restrict your recommendations to only suggesting whether any further action may be necessary or beneficial. In most circumstances an investigator should recommend formal action, informal action or no further action.

An investigator should not suggest a possible sanction or prejudge what the outcome of a grievance or disciplinary will be.

Formal action recommendations: The formal action an investigator could recommend would usually be:

- To initiate a disciplinary hearing
- Changes to a Policy or procedure
- Further investigation into other matters uncovered

Informal action recommendations: The informal action an investigator could recommend will usually be:

- Training or coaching for parties involved
- Counselling for parties involved
- Mediation for parties involved
- Notification that further similar action may result in disciplinary action

No further action recommendations: Although an investigator may find there is no further action necessary they could recommend that counselling, mediation or another form of support may be beneficial to the parties involved and the Authority.

It should be the commissioning manager and not the investigator who makes the final decision as to whether or not the disciplinary hearing is held. This is usually the person or group who would be conducting the disciplinary process. If their decision differs from the investigator's recommendation, the reasons for this should be written down and included as an addendum to the report.

## 13. Preparation for a Disciplinary Hearing

It is the Commissioning Manager's responsibility to arrange for all witnesses interviewed as part of the investigation to attend if required and ensure they are

briefed (please refer to [guidance for witnesses attending a disciplinary hearing](#) so that they know what to expect). Also, to notify the employee under investigation of the disciplinary hearing, enclosing the pack to be presented and their right to call witnesses at the hearing. The individual must be informed of this right but it is his/her responsibility or that of his/her representative to organise this. Advice can be sought from the HR Advisor prior to sending this correspondence.

It is the responsibility of the commissioning manager to present the findings of the investigation to the panel using the investigation report. They will be expected to present the key points of your investigation, explain any conflicting evidence and sum up the investigation. They will also need to prepare a statement of the main facts of the investigation for summing up. As the investigating Officer you will be expected to attend the hearing to respond to any queries and be prepared to contribute any relevant facts from the evidence heard at the hearing.

#### 14. Disciplinary Hearing

It is the responsibility of the Commissioning Officer to:

- Compile (with advice from an HR Advisor) the clearly defined and appropriate allegations
- To ensure the arrangements for the disciplinary hearing, including booking rooms for the hearing and for witnesses to wait, as well as ordering refreshments, water etc. and that the letter has gone to the employee concerned inviting him/her to the hearing along with all the appropriate documentation.

At the disciplinary hearing the protocol at Appendix 6 is followed and the Commissioning Manager will:

- Present the Statement of Case by outlining the allegations, presenting the evidence, and calling and questioning witnesses as required.
- Ask questions of the employee concerned and of their witnesses
- Answer questions from the employee concerned, their representative and the panel.
- Sum up the case. If new evidence is put forward which has not been covered previously comment on its relevance.

The procedures used at hearings are documented in the relevant Authority Policy.

#### 15. Appeal Hearings

Following a hearing, an employee has the right to appeal against any decision made. You are required to present the Statement of Case at an appeal hearing and ensure that the witnesses you wish to call are available on the day.

The administration of the appeal panel is undertaken by the HR Team who will ensure that the appeal pack is sent to the employee at least 14 calendar days before the appeal hearing.

## 16. Employment Tribunals

If the employee is dismissed or remains aggrieved following the formal disciplinary process, the employee has the right to complain to an Employment Tribunal (ET). As Investigating Officer, you may be required to attend as a witness to give evidence at the tribunal.

An organisation's procedures are scrutinised thoroughly at an ET. In cases of contested misconduct an employer has to pass the 3-stage test of reasonableness. They must demonstrate they acted reasonably in dismissing the employee showing that:

- There was a genuine belief in the employee's guilt
- There were reasonable grounds to sustaining that belief
- The employer carried out as extensive an investigation as was reasonable under the circumstances.

**IF YOU HAVE ANY QUERIES ON ANY OF THE ABOVE PLEASE CONTACT YOUR HR ADVISOR**

Should there be a statement about confidentiality and also the limitations in terms of a disclosure made by a respondent/witness?

## Appendix 2

### **Template Terms of Reference for investigation**

#### **Background**

(insert details of how issue came to light plus any relevant information on service/correct process etc. and any action taken to date)

#### **Allegation(s) to be investigated**

List allegation(s)

- 1.
- 2.

These allegations may be reviewed in light of any additional information identified as part of the investigation.

To produce a report with findings for <insert name of Commissioning Manager>.

#### **Principal parties**

Potential respondent(s): <insert name(s) and job-title(s) >

The Investigator <insert name of investigator>

#### **Confidentiality**

Confidentiality during an investigation is of the utmost importance so as to maintain the integrity of the evidence and the respect of the individual being investigated. It is essential that the investigating officer does not disclose more information than is necessary to assist the investigation process with any individual.

It is also necessary to impress upon any witnesses the need to maintain confidentiality, and it is a disciplinary offence in itself to breach that confidentiality.

The investigating officer is not to discuss the case with anyone other than those involved in the case. Employees must also be informed of the confidentiality in all cases.

#### **Council equipment and email addresses**

The Investigation officer shall only collect and store electronic Data using equipment supplied by the Council and under no circumstances process the Data on their own personal devices or personal email account(s). The term devices includes but is not limited to:

- Laptop computers
- Tablets
- Smartphones

This restriction excludes the use of mobile telephones purely for the making of telephone calls.

The use of Data in hard copy format by the Processor will be in accordance with the Council's Handling Personal Information Policy & Procedure.

Upon completion of the Investigation, the investigator will ensure that any Data kept in hard copy form will be returned in its entirety to the Commissioning manager.

Data Protection (\*Where an external IO being used ensure Confidentiality & Data Processing Agreement is signed)

The investigation officer will comply with all applicable laws including Data Protection legislation and ensure the protection of the information collected; allowing access to any Data strictly on a 'need to know' basis employing appropriate access controls at all times;

not disclose the Data to any Third Party in any circumstances other than with the express consent of the Commissioning manager or in compliance with a legal obligation.

Only copy, reproduce and/or distribute the Data to the extent necessary for the investigation

Upon completion of the investigation for which the Data has been in the possession of the investigator, return the Data securely and in its entirety to the Commissioning manager, and then delete the Data in its entirety, unless required by law to retain it; and

take appropriate technical and organisational measures to ensure a level of security appropriate to the risk to the Data, including where appropriate the encryption or pseudonymisation of the Data;

#### Release of witness statements

All participants should be informed that if information they provide is relevant to the investigation and likely to be presented to a formal process, e.g. potentially a disciplinary hearing and in some rare cases an Employment Tribunal they may be called to attend.

#### **Objectives of the investigation**

To implement an investigation into the allegation(s) of <insert allegations>. The objective of the investigation is to establish whether, on the balance of probabilities, there has been a breach of Council policies, procedures and standards <insert list of Council policies, procedures etc. as appropriate>

This investigation will be conducted in accordance with the Council's disciplinary Procedure and Investigation Policy.

## **Methodology**

As agreed with appointed Investigating Officer but would usually include:

Conducting interviews with the principal parties and any relevant witnesses as identified by the investigator. The respondent/complainant can request to be accompanied by either an appropriate work colleague or recognised trade union representative. All documents resulting from the investigation are potentially subject to disclosure in any legal proceedings.

Preparing detailed witness statements, appendices of relevant documents and correspondence and report for the < Commissioning Manager>. The report will summarise the key facts (cross-referencing any documents) in relation to specific allegations, include recommendation based on all evidence collected and any other recommendations related to the matter

Seeking specialist internal or external advice as appropriate to support the investigation.

The Investigating Officer will develop a schedule of meetings in consultation with the witnesses.

In addition to completing interviews, relevant documentation will be reviewed, and other relevant information sought. The report will be drafted once all interview notes have been signed off and all aspects of the investigation completed

## **Reporting**

The investigator will provide regular verbal updates on progress to the Commissioning Manager during the investigation and flag any issues that arise, which need to be followed up by the Commissioning Manager in order to manage the ongoing employment relationship and framework for the investigation, e.g. Whistleblowing concerns revealed as part of the investigation which may be protected disclosures and require appropriate action; concerns about the welfare of the employee who is the subject of the investigation; if the investigation timescales exceed 28 calendar days with weekly updates thereafter.

The investigator will compile a report on the evidence found with findings as to whether or not there is any case to answer. The investigation report and appendices will only be made available to the Commissioning Manager at the end of the investigation and after the investigator has completed his/her\* deliberations.

The investigator will attend any post-investigation meetings, as necessary to confirm the findings and to respond to questions regarding the case at any formal proceedings

## **Estimated duration**

The aim, subject to the availability of all parties will be to complete the investigatory interviews (and interview notes) and produce a report within 4-6 weeks from the date of agreeing the terms of reference and subject to establishing the names and availability of further relevant witnesses. This timescale is subject to review. Everyone's co-operation is relied upon to enable the investigation to be completed effectively and promptly

### **Commissioning Manager Responsibilities**

Resources (Insert as appropriate depending on the complexity of the case)  
Commissioning Manager to provide an Internal Co-ordinator (not previously involved in the case) to act as the single point of contact for the Investigator and principal parties  
To provide promptly all relevant information, correspondence and copies of relevant policies/procedures as requested.

To provide access to any independent, specialist advice if needed by the investigator

#### **Process:**

Assist with gaining co-operation of staff involved in the investigation to ensure it is carried out promptly, thoroughly and fairly; ensure staff are released from their operational duties in order to enable the investigation to be carried out promptly, liaising with other departments as necessary

To deal with all issues arising which affect the wider employment relationship;

To manage confidentiality issues and communication issues with the wider team;

To ensure witnesses are advised of their rights and responsibilities during the investigation and confirm details in writing;

To liaise with Legal, HR, Audit and senior management as appropriate and advise the investigator of any changes in the circumstances or other developments which may impact the investigation;

To organise any counselling/other support to individuals as required;

To ensure the subject of the investigation is advised of the outcome of the investigation and provide regular update on progress;

To decide in conjunction with HR who will adjudicate on the matter following the investigation and as to whom the final report and outcome of the investigation will be made available to (in full or part);

To make final decision as to how the case will be dealt with post-investigation and making the necessary arrangements in line with its and procedures

#### **If applicable - Role of the Internal Coordinator (DoE to identify)**

Manage all necessary administrative and procedural arrangements (including venue) for the interviews to take place and ensure attendance of relevant parties (including representatives, where appropriate).

## Appendix 3

### Investigation Planning Template

#### The process for the investigation

1. Plan and prepare for the investigation and inform employees involved. The purpose of the investigation is to establish whether or not there is a case to answer
2. Establish the facts by determining the sequence of events that led up to the incident or complaint
3. Interview witnesses and collect evidence
4. Write your report outlining your conclusions.

#### Your approach

##### The investigating officer needs to:

- be observant
- build a rapport with witnesses or others involved
- be impartial
- use a range of questioning techniques
- remain calm when dealing with aggressive or upset people
- be able to challenge where contradictions arise
- be able to summarise thoughts and ideas clearly
- make sound decisions without prejudice

What is the incident or complaint you are investigating? You need to be clear about the terms of reference and the parameters within which you investigate.

Who do you need to speak to?  
Witnesses, the person accused of the offence, other involved.

What specific information do you want from each person?

What was the sequence of events leading up to the incident or complaint?

Who was involved?

From whom do you need witness statements?

What other documentation or evidence do you need to see? You need to collect information that you believe would or would not support the case. Other forms of evidence could include performance standards, training and development records, type and quantity of supervision.

After you have carried out your investigation ask yourself the following:

In your opinion what are the known facts? Do they seem fair and reasonable?

Is there any information that is unknown or speculative?

Is there a case to answer?

#### Ground rules for conducting investigative interviews

1. The interviews will be held on neutral territory in a confidential room.
2. Parties are asked to be available to meet investigator when asked. Seven calendar days' notice will be given of the meeting and reasonable requests to vary date and/or time will be considered provided the overall aim of completing the investigation promptly is not compromised.
3. Parties will be provided with relevant and sufficient information (where it is available) prior to the meeting to enable them to prepare for the interview and respond accordingly.
4. Each of the principal parties has the option to be accompanied by a companion, either a recognised trade union representative or work colleague. The companion may participate in the interview, ask questions and help the investigator to find answers to their questions. The companion may not answer questions on behalf of the interviewee. (See guidance on the role of a companion)

5. Parties are asked to be honest, open and specific when answering questions and to give as full an answer as possible.
6. If parties wish to provide their own notes of incidents (showing details and dates) or any other relevant documents prior to the interview, they may do so, submitting documents to the internal coordinator. Alternatively, these may be brought to the interview.
7. The investigator will allow appropriate time for adjournments to enable the interviewee and his/her representative to confer (or for a short rest break)
8. If matters arise which require further investigation, an adjournment will be called or the interview suspended and re-arranged if appropriate.

#### Appendix 4

#### Template investigation meeting record

INVESTIGATION MEETING	
Meeting Date & Time	
Meeting Location	
Attendees	
Purpose of Panel Meeting	
<p>To be explained at the outset of the Meeting:</p> <ul style="list-style-type: none"> <li>▪ If the employee is the subject of the investigation they can be accompanied by a work colleague or Union Representative (prior notification must be provided to the Investigating Officer to ensure appropriate meeting arrangements can be organised) provided this does not cause any delays at this informal stage.</li> </ul>	

- Right of either party (Employee / Employer) to adjourn the meeting at any point

Note of Importance:

(Point 20 - Investigation Policy) Witnesses are informed that a record of the discussion at the informal investigatory meeting will be made and retained by the Investigating Officer. This will be an accurate but not verbatim record of the investigatory interview. If the information provided by the witness during the meeting is relevant to the investigation and likely to be presented at a disciplinary hearing the witness should be advised that they may be called as a witness, for which they would be given appropriate support.

Please be aware that, at any point during the meeting, either party can ask for an adjournment.

To assist in ensuring I undertake a full investigation it will be necessary for you to provide as full an answer as possible to the questions. Please note that this is purely a fact finding exercise.

Record of Meeting:

Signature of employee to confirm the accuracy of the information contained in this document fairly reflects the conversation held between the parties to the meeting and that they have been informed that the notes of this meeting may be used as part of any formal action that may occur for which they may be required to attend to give evidence.

Employee Name (printed) \_\_\_\_\_

Employee Signature \_\_\_\_\_

Signature of Investigating Officer to confirm the accuracy of the information contained in this document fairly reflects the conversation held between the parties to the meeting and that the employee has been advised that the notes of this meeting may be used as part of any formal action that may occur for which they may be required to attend to give evidence.

Investigating Officer Name (printed) \_\_\_\_\_

Investigating Officer Signature \_\_\_\_\_

### Investigation Officer's Report Template

[Name of procedure – Disciplinary, Grievance, etc.]

1. Contents Page

2. Written chronological summary of the case

3. The letter calling the employee to the disciplinary hearing

4. The investigation report

a. Background to the investigation

- [name of employee] is employed as [job title] at [place of work]. [She/He] commenced work with Carmarthenshire County Council on [first day of service date], currently working [full time/or hours per week].
- It has been alleged that [name of employee] [A detailed summary of the allegations].
- The date appointed as the Investigating Officer

b. Details of any relevant existing warnings.

c. Conduct of the investigation

The remit for the investigation was clarified and agreed between the <insert name of Investigating Officer> and <insert name of Commissioning Manager> on <insert date>. It was agreed that the investigation would focus specifically on:

- <insert allegations>,

and that the report with findings and recommendations would be submitted to the Commissioning Manager and the matter dealt with in accordance with the Council's <insert name of policy and procedure>

<Include details of any immediate discussion with employee under investigation, whether suspended (full or other pay), how allegations came to management attention.

< include reasons and dates for any time delays in the investigation process especially if the investigation exceed 28 calendar days>

<Include details of any actions taken if a protected disclosure is made during the course of the investigation in line with Whistle-blowing Policy>

d. Summary of the allegations/complaint

Clearly highlighting where points are being referenced on the statement

e. Investigation Interview(s)

An investigation meeting was organised for [date] in which [names of attendees] and I were in attendance.

<Include details of the investigation process e.g. key witnesses that were interviewed and explanation why any potential witnesses was not interviewed, e.g. facts not in dispute; third party witness, , and any significant events that occur during the course of the investigation, any delays in the process including reasons why>

<Include here a summary of witness statements making clear reference to the section of the witness statement being referred to>

<Provide a summary of response to allegations by the individual under investigation and responses of witnesses. Making clear reference to the section of the witness statement being referred to>.

I reviewed the information that I had gathered and concluded that it was sufficient/insufficient\* (\*delete as appropriate) to enable me to reach some findings

with/without\* interviewing any other witnesses: some of the facts were/not\* in dispute and there was/was not sufficient corroboration of events to enable me to establish the facts. <Include any further actions taken depending on outcome as appropriate>

f. Findings

As a result of my investigation [complete details]

g. Summary

Summarise above in relation to standards breached. If it is clear from the procedure, indicate Unsubstantiated/ Gross Misconduct/ Misconduct.

h. Recommendation

I believe a thorough investigation has been conducted in relation to this case and in view of the evidence that has been gathered at the investigation interview and information provided by [names of witnesses] and [add in any other source of evidence].

I recommend that .....either formal action/ informal action or no further action be considered by the commissioning manager. Please refer to Appendix 1 point 12

Name, job-title and date of investigating Officer and signature

Appendices of all policies, procedures or documentation referred to within the management report, e.g. disciplinary policy, training records, etc.

## Appendix 6

### Protocol for Disciplinary Hearing

The Head of Service/ or delegated officer (Chair) invites both parties into the room and undertakes general introduction and role in hearing.

Explain the reason we are here (disciplinary hearing under CCC Disciplinary Procedure to deal with the allegations against ..... ) Detail the allegations (can be read from the invitation to hearing letter).

Agree the procedure for the hearing and deal with any matters of clarification. Usually as outlined below but any changes should be noted along with their reasons.

### Investigations

Commissioning Manager then makes the presentation.

The Commissioning manager and Investigating officer are then questioned by the other party and the officer who is hearing the case. (The HR representative advising the chair may ask questions for clarification)

Any witnesses for the investigation officer will be called.

Witnesses will be questioned by the other party and the officer who is hearing the case. (The HR representative advising the chair may ask questions for clarification)

The person who is facing the charge then makes their presentation (or their union on their behalf).

The Commissioning Manager and the officer hearing the case will ask questions. (The HR representative advising the chair may ask questions for clarification)

Witnesses for the officer facing the charge officer will be called.

Witnesses will be questioned by the other party and the officer who is hearing the case. (The HR representative advising the chair may ask questions for clarification)

Summing up – no new evidence can be introduced at this stage

The Commissioning Manager sums up first.

The person facing the charge sums up second.

The chair asks both parties to leave in order that the case can be considered.

If possible, the decision will be made on that day and parties are asked to stay in the vicinity of the hearing so any matters of clarification can be heard.

Decision

This is carried out the same day unless it is not reasonable to do so.

The chair calls everyone back into the room and gives his/her decision of the disciplinary outcome/sanction.

Explain that the next stage is to confirm that decision in writing and that an appeal against the decision can be made to Paul Thomas and must be received by him within 14 days of receipt of the letter confirming the disciplinary penalty/dismissal.

If it is not possible to come to a decision that day, other arrangements should be agreed but a letter will be sent to the person facing the allegation(s) as soon as possible.

## Appendix 7

### Questioning approaches to use

An investigator should be able to ask questions that challenge and test the credibility of the information being given in a manner that is professional and does not intimidate an interviewee

There are a number of different types of questions an investigator may use during an investigation meeting to help them control the meeting and gather the full facts of the matter from the interviewee.

<p>Open questions</p> <p>Encourage an interviewee to open up. They can provide a rich source of information that an investigator can then go on to explore in more detail</p>	<p>For Example</p> <ul style="list-style-type: none"><li>- Explain to me exactly what you saw....</li><li>- Describe exactly what happened...</li></ul>
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	<ul style="list-style-type: none"> <li>- Talk me through what you heard...</li> </ul>
<p><b>Closed /specific questions</b></p> <p>Usually give a yes, no or definite answer. They can be helpful to gather specific facts and can help focus an overly talkative interviewee.</p>	<p>For Example</p> <ul style="list-style-type: none"> <li>- What time did you leave your workplace?</li> <li>- How many times did that happen?</li> <li>- Did you speak to your manager about that?</li> <li>- Who else was there?</li> </ul>
<p><b>Probing questions</b></p> <p>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</p>	<p>For Example</p> <ul style="list-style-type: none"> <li>- When you say she was aggressive what exactly do you mean by aggressive?</li> <li>- You mentioned earlier that x....tell me more about that.</li> </ul>
<p><b>Feelings questions</b></p> <p>Can help focus an interviewee on what is important to them and reveal their beliefs. However, they should be used sparingly as the meeting is mainly to establish the actual facts of the matter.</p>	<p>For example</p> <ul style="list-style-type: none"> <li>- What was important to you about that?</li> <li>- What is your main concern about what happened?</li> </ul>
<p><b>Asking "What else"</b></p> <p>Helps an investigator to probe deeper beyond the initial information provided. However, care needs to be taken to ask this sensitively</p>	<p>For example</p> <ul style="list-style-type: none"> <li>- What else can you tell me about what happened?</li> <li>- What else do I need to know about the matter?</li> </ul>
<p><b>Summaries</b></p> <p>Provide an opportunity to check that the correct information is recorded. They also allow the interviewee to reflect on what they have said to correct any inaccuracies and to give further details where there are gaps.</p>	<p>For example</p> <ul style="list-style-type: none"> <li>- So can I clarify that what you are telling me is that you left your workplace at 10am because there was a problem at home and you did not return to work. Have I got that right?</li> </ul>

There may be some types of questions that can hinder an investigation and should be avoided wherever possible

Questioning approaches to avoid

<p><b>Interrogative questions:</b></p> <p>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.</p>	<p><b>For example:</b></p> <p>Instead of “Why did you do that?” use “What made you decide to do that?”</p>
<p><b>Leading questions:</b></p> <p>These can lead the interviewee to provide the answer the investigator hopes or expects to hear.</p>	<p><b>For example:</b></p> <p>Instead of “Do you think he was perhaps over reacting?” use “What did you think of his reaction?”</p>
<p><b>Multiple questions:</b></p> <p>Lead to confusion and the interviewee will answer what they heard first, last or the part they are most comfortable answering.</p>	<p><b>For example:</b></p> <p>Instead of “What is your role, do you like it and why?” ask each question individually.</p>

