



**Workforce**

# **Workforce Policies Investigation Process**

**Guide for investigators**

The following guide forms part of the standard for workforce policies that apply to all staff within NHSScotland regardless of which Board they are employed by.

The NHSScotland [Workforce Policies Investigation Process](#) <sup>1</sup> ensures that a thorough investigation into an incident or concern is undertaken, before any formal process is considered under the following NHSScotland Workforce Policies:

- [NHSScotland Workforce Bullying and harassment Policy](#) <sup>2</sup>
- [NHSScotland Workforce Capability Policy](#) <sup>3</sup>
- [NHSScotland Workforce Conduct Policy](#) <sup>4</sup>
- [NHSScotland Workforce Grievance Policy](#) <sup>5</sup>

The first part of the process is called the Pre-Investigation Stage. At this stage the manager must determine the risk of the concern or incident, and take immediate action to ensure the safety of the individual under investigation and / or safety of persons, the environment and any physical evidence that would be required to assist the investigation.

The manager will assess the complexity, nature and scale of the case to determine if they are able to carry out the investigation themselves, or if they will need to appoint an investigation manager. They will consider the skills, time commitment and whether a conflict of interest is identified prior to appointing an investigation manager.

## Investigation Remit

Whether the manager is carrying out the investigation or not, an investigation remit needs to be created which details the precise purpose and scope of the investigation. The manager should provide background to incident / allegation(s) detailing:

- date, time and place
- describe the incident / allegations
- state whether there has been any previous history
- names of those involved
- state exactly what is to be investigated
- attach any relevant documentation.

The remit will provide a clear indication for the investigating manager to carry out a thorough investigation of the allegation(s) / incident(s) and then present the facts with conclusions in a report format.

## Investigation

If you are the manager who has been appointed to carry out the investigation, you will write to the employee to confirm who the investigation team are and agree a date for an initial meeting. In bullying and harassment and grievance cases you should invite the complainant to meet with you first but also offer to meet with the employee under investigation. You should make them aware that at this stage you will have little information to share and therefore they are not required to attend at this stage. After this meeting, you will provide a provisional timescale for completion of the investigation.

## **Preparing for an Investigation**

### **Creating a plan**

Creating an [investigation plan](#)<sup>6</sup> can provide you with a structured approach to follow. This can help you focus on:

- what facts need to be established
- what evidence needs to be collected
- who you need to speak to and
- completion of the investigation within the provisional time-frame.

You should also collect copies of any policies and procedures that may be relevant to the matter. Even if you are already aware of the policies, you should re-read them to refresh your knowledge and ensure that correct procedures are followed wherever required.

### **Sources of evidence**

There is no exhaustive list that you can rely on to know what sources of evidence you should collect. Each investigation will be different and the facts and information that need to be collected will also differ. When initially identifying what may be relevant you should consider:

- the remit of the investigation and what you need to establish
- what sources of evidence may be available to establish the facts of the matter
- how the evidence could be collected
- whether there are any time constraints for collecting the evidence, such as a witness going away on annual leave or CCTV records that are usually deleted after a number of days.

As the investigation progresses, other possible sources of evidence may come to light or become relevant.

However, you should remember that you only have to conduct a reasonable investigation. You do not have to investigate every detail of the matter, only what is reasonably likely to be important and relevant.

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

As the investigating manager you should source evidence which both supports and conflicts with the allegation you are investigating.

## **Where to meet**

An investigation meeting should take place in a private room, where interruptions are unlikely to occur. Usually, meetings should be at the employee's normal place of work and during working hours. However, where a greater degree of confidentiality is required it may be better to hold the meeting outside of normal working hours or away from the workplace. This can be discussed with the employee and / or their representative.

## **Interviewing Skills**

Investigations can be complex and challenging in nature. You therefore need to consider the points below when meeting with the employee and any witnesses.

### **Listening**

This is the vital part of conducting an investigation meeting. Effective listening will help you get a better understanding of the people you interview and their points of view.

Typical actions that you should follow include:

- have a list of pre-planned questions
- remain focused on the employee / witness and the reasons for the meeting
- concentrate on exactly what the employee / witness says
- be open minded to anything the employee / witness may say
- acknowledge the employee's / witness' viewpoint
- listen for points that the employee / witness avoids covering or giving details on
- allow the employee / witness to finish their point before moving the interview
- on or asking a further question
- use silence to encourage the employee / witness to elaborate on points.

## Body language

You should think about your body language and consider how your actions may be perceived. Typical actions that can help to reassure the employee / witness that the meeting will be conducted impartially, fairly and professionally include:

- facing the interviewee in a relaxed body posture
- being calm
- not folding arms, which can be intimidating
- giving an appropriate amount of eye contact
- giving appropriate affirmative facial expressions and gestures, such as nodding

You should be careful to avoid making judgements based on an interviewee's body language. Where there is some discomfort or unease, you could ask, in a sensitive way, why the employee / witness is acting in a particular way, remembering that an interview of this sort can be stressful.

## Questioning techniques

You 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 the employee / witness.

There are a number of different types of questions you can use during an investigation meeting to help control the meeting and gather the full facts of the matter.

Question approaches to use are:

- Open questions
- Closed questions
- Probing questions
- Feelings questions
- Using "What else?"

Questions approaches to avoid are

- Interrogative questions
- Leading questions
- Multiple questions.

Further assistance on questioning techniques is provided in the [guide to questioning approaches](#) <sup>7</sup>.

The role of the representative (or accompanying person) is to support the employee / witness. It should be the employee / witness who responds to the questions asked but the representative can offer support and explain matters

on behalf of the employee / witness. Check that the employee / witness agrees with what the representative says on their behalf.

## **Carrying out the Investigation**

You will hold separate meetings with any witnesses and the employee(s) under investigation. For the employee(s), you will write to them and outline the allegation(s), providing all documentation which applies to the allegation(s). This will be issued to the employee(s) at least 14 calendar days in advance of the meeting.

If new related evidence comes to light during the investigation which leads to changes to the concerns or allegations, you will confirm this to the employee in writing. You will need to assess if these are significant, and if so, a further meeting with the employee may be required to provide them with the opportunity to respond.

If new allegations arise in the course of the investigation, you will need to discuss with the employee and their representative, and agree whether these are investigated with the ongoing investigation or should be considered separately.

It needs to be made clear to all parties that all evidence from the investigation will be shared with the employee and their representative regardless of whether the matter proceeds to a hearing or not.

## **The Reluctant Witness**

Some employees may be reluctant to provide evidence for an investigation. You should explore why an employee is reluctant to give evidence, provide reassurance and seek to resolve any concerns they have.

The employee under investigation should have every opportunity to fully understand and challenge the evidence against them. On that basis, only in highly exceptional circumstances e.g. where a witness is able to demonstrate the potential for reprisal, should the investigating manager agree that a witness statement is anonymised.

## **Meeting Notes**

Notes will be taken of all meetings. Afterwards a copy of the notes will be provided and the employee / witness will be asked to confirm the content for accuracy. They cannot add new evidence or further explanation not stated at the meeting, to the notes. They will normally be given 14 calendar days to confirm their accuracy, otherwise, the content will be considered an accurate record.

## Preparing for the unexpected

In exceptional cases, when employees or witnesses are unable to take part no matter what measures are taken, it may still be possible to progress with the investigation where the process can be managed such that it will still be fair and reasonable.

## An employee is too ill to attend

You should consider the following:

- The ill health of an employee will not usually be grounds for abandoning any ongoing investigation.
- If an employee's absence is, or is likely to be short you will usually wait until the employee recovers, so that they can take a full part in the process.
- When an employee is absent and it appears that it will be longer term, you may require the employee to attend Occupational Health. Occupational Health will be asked to determine if the employee is fit to take part in the standard investigation process and / or if any special measures would allow it to progress, whilst still being fair for the employee.
- If Occupational Health advise that the employee is fit to take part the investigation will continue.
- If Occupational Health advise that the employee is not fit to take part in the standard process, you should consider taking any of the special measures set out below to enable the employee to take part.
- If the employee is not fit and special measures will not enable them to take part you reserve the right to proceed with the investigation in the employee's absence.

## Special Measures

You may propose to adjust the standard investigation procedure by taking any or all of the measures below, with the aim of enabling an employee / witness to take part in the investigation process:

- **Venue** - Consideration can be given to holding investigation meetings on another site which is not the employee's usual workplace, if that will reduce stress for the employee or accommodate other mental / physical / emotional needs.
- **Representation** - Where the employee's ill health affects their ability to explain their case, consideration can be given to any request the employee has for additional or alternative support e.g. a mental health advocate, or for the representative to have an expanded role in the process, if that will enable the employee to put their case forward fully.

- **Written submission** - The employee can rely on written representations, if they would have difficulty explaining their case verbally. This may be prepared in conjunction with their representative.
- **Documentation** - If the employee's ill health affects their ability to assess written documentation, consideration can be given to providing documentation with additional time prior to an investigation meeting.
- **Timings** - Whilst matters should be dealt with promptly, consideration can be given to allowing extra time for any stage of the investigation process to enable an employee to take part. Attention can be given to the duration of investigation meetings and to appropriate breaks during a meeting.

## **Failure to engage**

There may be occasions where the employee feels unable to attend an investigation meeting. Where this is for health reasons, please see information above. If the employee intends to be supported or represented then the availability of all parties will be considered, in order to agree a suitable date for all parties. If their representative is unavailable, further dates will be agreed to allow the meeting(s) to happen. Where the employee decides not to attend and there is no reasonable explanation for this, you will offer a second meeting and if they fail to participate, the investigation will be concluded based on the information available

## **Representative do not turn up**

If the employee / witness's representative does not attend as planned, you should discuss with the employee / witness whether they are happy to proceed in their absence. Assurance should be given that even if the meeting commences it can be adjourned and reconvened if the employee / witness changes their mind. Notes of the meeting should confirm if agreement was reached to continue.

## **A lawyer turns up as the employee's representative**

NHSScotland workforce policies do not allow for representation by lawyers, only trade union representatives and workplace colleagues. You should advise the employee that they can either proceed without representation or the meeting can be adjourned to allow the employee to source representation in line with policy.

## **Resignation of an employee**

Investigations should normally be concluded even in the event that the employee under investigation resigns. This approach provides assurance that



due process has been followed and enables the employer to fulfill their duty of care to other employees, patients and the public.

## **Completing the Investigation Report**

### **Investigation Decision**

The decision whether or not to take further action must be based on the information gathered, including the facts contained in the statements and notes of investigation meetings. This should include evidence that both supports and conflicts with the allegations. If you refer the case to move into a formal process you must be able to point to the facts that informed this decision.

You will prepare a report taking into consideration:

- the evidence provided by the employee under investigation and any witnesses
- the physical evidence (if applicable)
- conflicting evidence
- why you have accepted a particular line of evidence
- live conduct sanctions for the same or similar reasons or examples of similar patterns of behaviour
- reasons for the conclusions and recommendations.

### **Investigation Factual Findings and Recommendations**

The factual finding(s) and recommendation(s) in the report, regarding the incident / allegations(s) will be one of the following:

- the allegation is not upheld
- the evidence and / or nature of the complaint justifies learning outcomes which may fall within the [NHSScotland Workforce Capability Policy](#)<sup>3</sup>.
- the evidence justifies referral to a formal panel under the relevant NHSScotland workforce policy

In relation to Grievance, the Investigation Report will be referred back to the person(s) or panel that commissioned it.

Note: Where the employee holds more than one post with the employer (including work for the Staff Bank), separate consideration should be given to each post and a separate recommendation arrived at. This will involve liaison with the relevant line manager to agree the recommendation(s).

## **Further Considerations**

The investigation may identify that there are systems or process issues which require to be taken forward either as an alternative to, or in addition to, the employee management issues. You are accountable for reporting these to the appropriate line and / or professional manager who has accountability for the service. You may be involved in taking these forward if agreed with other relevant parties.

## **Submitting the Report**

This report should be submitted to the manager within 21 calendar days of the completion of the investigation.

It will then be their responsibility to meet with the employee as soon as possible thereafter to confirm the conclusions of the investigation(s), any further action to be taken under NHS Scotland Workforce Policies and to offer appropriate support.

## **Grievances / Bullying and Harassment Complaints / Counter-complaints**

Where an employee raises a grievance, bullying and harassment complaint or counter-complaint during the investigation process, the investigation may be temporarily suspended in order to deal with the grievance or complaint. Where the grievance or complaint and matters under investigation are related, it may be appropriate to deal with both issues concurrently and you may need to incorporate this into your investigation.

## References

<sup>1</sup> NHSScotland Workforce Policies Investigation Process

<https://workforce.nhs.scot/policies/workforce-policies-investigation-process-overview/>

<sup>2</sup> NHSScotland Workforce Bullying and Harassment Policy

<https://workforce.nhs.scot/policies/bullying-and-harassment-policy-overview/>

<sup>3</sup> NHSScotland Workforce Capability Policy

<https://workforce.nhs.scot/policies/capability-policy-overview/>

<sup>4</sup> NHSScotland Workforce Conduct Policy

<https://workforce.nhs.scot/policies/conduct-policy-overview/>

<sup>5</sup> NHSScotland Workforce Grievance Policy

<https://workforce.nhs.scot/policies/grievance-policy-overview/>

<sup>6</sup> Workforce Policies Investigation Process : investigation planning document

<https://workforce.nhs.scot/supporting-documents/form/workforce-policies-investigation-process-investigation-planning-document/>

<sup>7</sup> Workforce Policies Investigation Process : guide to questioning approaches

<https://workforce.nhs.scot/supporting-documents/guides/workforce-policies-investigation-process-guide-to-questioning-approaches/>