

NHSScotland Workforce Policies Investigation Process

1. Workforce Policies Investigation Process

1.1 Aim

1.1.1 To provide a clear process to undertake full and thorough investigations in a timely manner to establish facts.

1.1.2 To support informed and transparent decision-making for cases being considered under NHSScotland workforce policies.

1.2 Scope

1.2.1 This policy applies to all employees with the exception of medical and dental staff in relation to their professional conduct or competence for which the relevant policy applies. It also applies to workers i.e. bank, agency and sessional workers. References to employees should be taken to apply to workers unless otherwise stated.

1.2.2 It applies where an investigation is required under NHSScotland employers' [Conduct](#)¹, [Bullying and harassment](#)² and [Grievance](#)³ policies and the [Capability](#)⁴ policy where it is not clear if it is a conduct or capability matter.

1.2.3 This Policy is compliant with current legislation and will meet the aims of the [Public Sector Equality Duty](#)⁵ of the [Equality Act 2010](#)⁶.

1.3 Definitions

1.3.1 The **investigating manager** is the individual who has been commissioned to undertake the investigation

1.3.2 The **manager** will normally be the direct line manager of the employee unless there is a conflict of interest e.g. they are a witness or they are the subject of a bullying and harassment claim.

1.3.3 **Physical evidence** includes items such as case notes, log books, invoices or computer equipment.

1.4 Roles and responsibilities

There is a range of standard expectations on all parties including HR, Trade Union representatives and Occupational Health which underpin all policies. Read more about standard [roles and responsibilities](#)⁷. In addition the following specific responsibilities apply to this policy:

1.4.1 Manager of employee under investigation

The manager should:

- make themselves available for those who are involved in an investigation
- advise employee at the earliest opportunity when they are subject to investigation and why this is the case
- keep employee fully informed on progress relating to the investigation
- feedback the outcome of the investigation to the employee and offer appropriate support

1.4.2 Employee

The employee should:

- actively participate in the process to avoid delays
- be open and honest with the investigation team to ensure facts are established
- consider the position of any complainants and witnesses as well as their own

1.5 Procedure

1.5.1 The procedure for undertaking workforce policy investigations is shown in the [flowchart](#)⁸.

1.5.2 Other resources are also available to support employees participating in investigations:

- [Guide for employees](#)⁹
- [Guide for witnesses](#)¹⁰

Find out more about support for employees and witnesses in the [employee support section](#)¹¹.

1.6 Pre-Investigation Stage

1.6.1 When the manager identifies or is made aware of a concern or incident, they must take immediate action to ensure the safety of persons, the environment and physical evidence.

1.6.2 The manager should assess the risk to determine whether alteration to duties or suspension is required. Read the [guide to suspension](#)¹² for the Conduct policy. They should also consider the requirement for referral to external agencies, such as the Counter Fraud Service, regulatory bodies, child protection or adult support and protection networks, Disclosure Scotland. Find out more in the [criteria for referral to external agencies](#)¹³ and the guide to [Counter Fraud Services](#)¹⁴.

1.6.3 The manager should meet with the employee to advise that a concern has been raised, an investigation is being arranged and to offer support. The outcome of the meeting will be confirmed in writing within 7 calendar days, using the standard [investigation initiation letter template](#)¹⁵. Where possible, this communication should advise who will be undertaking the investigation.

1.6.4 Where it has been determined that alteration to duties or suspension is required the employee will be informed of this at the meeting in line with the guidance contained in the [guide to suspension](#)¹². In such cases, the outcome of the meeting will be confirmed in writing, using the [confirmation of suspension letter template](#)¹⁶, within 4 calendar days in line with the suspension guidance.

1.6.5 The manager will inform witnesses that they may be required to participate in an investigation and will request statements, using the [Statement template](#)¹⁷. Read the [Guide for witnesses](#)¹⁸ for more information.

1.6.6 An investigation team will be identified comprising an investigating manager and HR representative. In cases where there are clinical or technical issues out with the investigating manager's area of expertise, an appropriate professional or technical adviser should be added to the team. If the investigation relates to an employee in training, an educational / Deanery adviser should be considered.

1.6.7 In identifying the team to undertake the investigation, the manager should consider the complexity, nature and scale of the case. This will determine the level of training and skill required of the investigating manager and the time commitment to undertake the investigation in a timely manner. Taking into account these factors it may be appropriate for the manager to undertake the investigating manager role, unless a conflict of interest has been identified.

1.7 Investigation Team Planning

1.7.1 The investigation team will meet to plan the investigation. Read the [Investigation planning document](#)¹⁹ for more information.

1.7.2 In bullying and harassment or grievance investigations, the investigating manager will write to the complainant, using the standard [complainant investigation initiation letter template](#)²⁰, to confirm who the investigation team are and arrange a mutually agreeable date to meet. At the same time, they will write to the employee who is the subject of the complaint to confirm they have been appointed to undertake the investigation and offer to meet with the individual to hear their initial response to the allegations, making clear full allegations and information will not be available at this stage. On this basis, a further investigation meeting will be necessary. The employee will be advised that they can provide a statement or other relevant information for consideration by the investigation team. There is no requirement for the employee under investigation to participate in a meeting at this stage.

1.7.3 In cases where the outcome potentially falls within conduct or capability, the investigating manager will write to the individual under investigation, using the [standard investigation initiation letter template](#)¹⁵, to confirm who the investigation team are and arrange a mutually agreeable date to meet for an initial meeting regarding the allegations. The employee will be advised that they can provide a statement or other relevant information for consideration by the investigation team.

1.7.4 Following the meeting, the investigating manager will provide a provisional timescale for completion of the investigation dependent on the need for witness meetings and any further meeting with the employee to allow them to respond to the full documentation relating to the investigation.

1.7.5 The investigating manager will write to any witnesses, using the standard [witness investigation initiation letter template](#)²¹, to confirm who the investigation team are and arrange a mutually agreeable date to meet.

1.8 Investigation

1.8.1 The investigation team will collate and consider relevant documentation including policies, procedures and protocols. Any patient and / or other confidential data circulated must be anonymised. Original un-redacted documents should be available for reference within the confines of the investigation meeting as appropriate.

1.8.2 Witness investigation meetings should be held. Meetings can be recorded to support the preparation of notes where all parties have agreed in advance. Notes of the meetings should be prepared and sent to the witnesses for confirmation of the content. Unless otherwise agreed, notes should be returned within 14 calendar days, using the [investigation meeting notes covering letter](#)²² template. Notes should be signed or attached to the covering email where they have been returned electronically. Notes not returned within this period will be considered a correct record.

1.8.3 An investigation meeting will be held with the employee under investigation. The employee will be written to outlining the allegations under investigation and will be provided with all documentation which applies to the allegations. The correspondence will be issued at least 14 calendar days in advance of the meeting, using the [investigation meeting invite letter](#)²³.

Meetings can be recorded to support the preparation of notes where all parties have agreed in advance. Notes of the meeting should be prepared and sent to the employee for confirmation of the content. New evidence or further explanation not stated at the meeting

cannot be added to the notes at this stage. Where the note cannot be agreed, the employee's version will be appended to the investigation team's record for any further process. Unless otherwise agreed, notes should be returned within 14 calendar days, using the [investigation meeting notes cover letter](#) ²². Notes should be signed or attached to the covering email where they have been returned electronically. Notes not returned within this period will be considered a correct record.

1.8.4 The investigation team will assess whether further witness meetings are required. If so, the further evidence will then be shared with the employee under investigation for comment. Where there is extensive additional information this will be in a reconvened investigation meeting.

1.8.5 If during the investigation new related information comes to light leading to changes to the concerns or allegations, these will be confirmed in writing to the employee. Where the changes are significant, a further opportunity to consider these at interview will be provided.

1.8.6 Where new allegations arise in the course of the investigation, discussion should take place with the employee and their representative to agree whether these are investigated within the ongoing investigation or whether they should be considered separately.

7.8.8 In conduct cases, full disclosure of documentation at the disciplinary hearing will remedy any justifiable failure to share all evidence at the investigatory meeting and therefore the disciplinary hearing should progress.

1.9 Conclusion of Investigation

1.9.1 The investigating manager will consider the evidence and prepare the investigation report for the manager, using the [Investigation report template](#) ²⁴. Consideration should be given to:

- the evidence provided by the employee under investigation and any witnesses
- the physical evidence (if applicable)
- conflicting evidence
- why the investigating manager has accepted a particular line of evidence
- reasons for the conclusion and recommendations

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

1.9.2 There are 3 potential conclusions following the investigation:

- the allegation is not upheld
- the evidence and / or nature of the complaint justifies learning outcomes which may fall within the [NHSScotland Capability Policy](#) ⁴
- the evidence justifies referral to a formal panel under the relevant NHSScotland workforce policy

1.9.3 In addition to the above conclusions, regarding the specific concerns raised and recommended next steps, the investigating manager may identify broader concerns e.g. management issues or system failures, or the need for the application of other policies to support the employee such as the substance misuse policy. These findings should be included within the investigation report to ensure necessary action and / or support is implemented.

1.9.4 The investigation report should be submitted within 21 calendar days of the completion of the investigation. The investigation team should submit their report to the manager stating their recommendations for any further action under NHSScotland Workforce Policies.

1.9.5 The manager will meet with the employee as soon as possible after receipt of the report to confirm the conclusions of the investigation, any further action to be taken under NHSScotland Workforce Policies and to offer appropriate support. This feedback will be confirmed in writing within 7 calendar days and will reflect the requirements of the relevant policy:

- [NHSScotland Workforce Bullying and harassment Policy](#) ²
- [NHSScotland Workforce Conduct Policy](#) ¹
- [NHSScotland Workforce Capability Policy](#) ⁴
- [NHSScotland Workforce Grievance Policy](#) ³

1.10 Grievances / bullying and harassment complaints / counter-complaints

1.10.1 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.

References

- 1 NHSScotland Workforce Conduct Policy
<https://workforce.nhs.scot/policies/conduct-policy-overview/>
- 2 NHSScotland Workforce Bullying and Harassment Policy
<https://workforce.nhs.scot/policies/bullying-and-harassment-policy-overview/>
- 3 NHSScotland Workforce Grievance Policy
<https://workforce.nhs.scot/policies/grievance-policy-overview/>
- 4 NHSScotland Workforce Capability Policy
<https://workforce.nhs.scot/policies/capability-policy-overview/>
- 5 Public Sector Equality Duty
<https://workforce.nhs.scot/about/principles-and-values/>
- 6 Equality Act 2010
<https://www.legislation.gov.uk/ukpga/2010/15/contents>
- 7 Roles and responsibilities
<https://workforce.nhs.scot/about/roles-and-responsibilities/>
- 8 Workforce Policies Investigation Process : flowchart
<https://workforce.nhs.scot/supporting-documents/flowchart/workforce-policies-investigation-process-flowchart/>
- 9 Workforce Policies Investigation Process : guide for employees
<https://workforce.nhs.scot/supporting-documents/guides/workforce-policies-investigation-process-guide-for-employees/>
- 10 Workforce Policies Investigation Process : guide for witnesses
<https://workforce.nhs.scot/supporting-documents/guides/workforce-policies-investigation-process-guide-for-witnesses/>
- 11 Employee support
<https://workforce.nhs.scot/about/employee-support/>
- 12 Conduct Policy : guide to suspension
<https://workforce.nhs.scot/supporting-documents/guides/conduct-policy-guide-to-suspension/>
- 13 Criteria for referral to external agencies
<https://workforce.nhs.scot/supporting-documents/guides/criteria-for-referral-to-external-agencies/>
- 14 Workforce Policies Investigation Process : guide to Counter Fraud Services
<https://workforce.nhs.scot/supporting-documents/guides/workforce-policies-investigation-process-guide-to-counter-fraud-services/>
- 15 Workforce Policies Investigation Process : respondent investigation initiation letter
<https://workforce.nhs.scot/supporting-documents/letter-template/workforce-policies-investigation-process-respondent-investigation-initiation-letter/>

- ¹⁶ Workforce Policies Investigation Process : confirmation of suspension letter
<https://workforce.nhs.scot/supporting-documents/letter-template/workforce-policies-investigation-process-confirmation-of-suspension-letter/>
- ¹⁷ Workforce Policies Investigation Process : statement template
<https://workforce.nhs.scot/supporting-documents/form/workforce-policies-investigation-process-statement-template/>
- ¹⁸ Workforce Policies Investigation Process : guide for witnesses
<https://workforce.nhs.scot/supporting-documents/guides/workforce-policies-investigation-process-guide-for-witnesses/>
- ¹⁹ Workforce Policies Investigation Process : investigation planning document
<https://workforce.nhs.scot/supporting-documents/form/workforce-policies-investigation-process-investigation-planning-document/>
- ²⁰ Workforce Policies Investigation Process : complainant investigation initiation letter
<https://workforce.nhs.scot/supporting-documents/letter-template/workforce-policies-investigation-process-complainant-investigation-initiation-letter/>
- ²¹ Workforce Policies Investigation Process : witness investigation initiation letter
<https://workforce.nhs.scot/supporting-documents/letter-template/workforce-policies-investigation-process-witness-investigation-initiation-letter/>
- ²² Workforce Policies Investigation Process : investigation meeting notes cover letter
<https://workforce.nhs.scot/supporting-documents/letter-template/workforce-policies-investigation-process-investigation-meeting-notes-cover-letter/>
- ²³ Workforce Policies Investigation Process : investigation meeting invite letter
<https://workforce.nhs.scot/supporting-documents/letter-template/workforce-policies-investigation-process-investigation-meeting-invite-letter/>
- ²⁴ Workforce Policies Investigation Process : investigation report
<https://workforce.nhs.scot/supporting-documents/form/workforce-policies-investigation-process-investigation-report/>