



**Workforce**

## **Workforce Policies Investigation**

### **Process**

**Information sharing protocol**

This guide applies to investigations carried out under the [NHSScotland Workforce Policies Investigation Process](#) <sup>1</sup> (WPIP). It is to help employees and managers to be clear on what information will be shared during the course of an investigation and to whom this will be shared.

## Principles

**Confidentiality** - the information that is provided to managers, employees and their representatives is privileged and intended for the named recipient only. The information should not be disclosed inappropriately or otherwise misused and should be stored securely in line with data protection regulations.

**Representation** - employees are entitled to be accompanied by an appropriate person when providing information to an investigation. Employees may also seek advice from their trade union representative when providing a statement for an investigation.

**Fairness and Consistency** – this guide is based on the need for fairness, consistency and natural justice.

**Victimisation** – an employees participation in an investigation or information collected during an investigation, will not be used as an opportunity to undermine, threaten or harass any employee.

## Investigation

The key individuals involved in any investigation are:

- the manager who requested the investigation and who receives its recommendations
- the investigation manager (if different from the manager noted above)
- the HR representative assigned to support the investigation
- the employee under investigation
- the representative of the employee under investigation
- member(s) of staff alleging misconduct / harassment or raising concerns
- witness(es)
- representatives of any witnesses
- work colleagues who accompany employees
- the panel members for any Hearing, including appeals

In some investigations these individuals may include employees of other organisations, or patients and their family or carers.

Some external agencies may have a legitimate interest in an investigation within the context of particular statutory regulations or where criminal misconduct has been alleged.

Other groups may seek information about an investigation such as MP's / MSP's, the Press, etc.

The table below sets out the access entitlements of different relevant parties to information relating to an investigation. The sharing of information related to an investigation process under NHSScotland Workforce Policies should be restricted to those who need to know. In bullying and harassment cases, the complainant may feel they are entitled to all of the information collected as they are directly affected by the issues. Complainants should be provided with sufficient feedback to allow them to understand why their complaint has been upheld or otherwise. This should not, however, include statements and notes of meetings which essentially relate to the employee under investigation rather than the complainant.

## **Investigation meetings**

The employee under investigation will be provided with all documentation available at the investigation meeting to allow them to be able to respond to the concerns under investigation. In bullying and harassment cases a note of the meeting with the complainant may be shared rather than the letter of complaint to ensure clarity regarding the specific issues that are under investigation. Employees should receive documentation that both supports and contradicts their evidence. Any personal information contained in the relevant documentation, such as the complainant's address, should be redacted before this is shared with the employee under investigation.

Notes of investigation meetings will be taken by the Investigation Team. The employee attending the meeting will be provided with a copy of these notes. The investigation team will consider any proposed corrections from the employee that provide a more accurate record of what was said at the meeting. Where agreement on corrections cannot be reached, the Investigation Team will attach the employee's proposed amended notes to their own for sharing during any further formal process under NHSScotland Workforce Policies.

## **Investigation Reports**

Investigation reports should include all evidence including statements, notes of meetings and physical records which relate directly to the allegations or concerns under investigation. This includes evidence which supports the allegations / concerns and that which contradicts it. It is recognised that on

occasion witness or other documentary evidence is shared with the investigation team which has no relevance to the investigation. Information provided during an investigation which has no link to the issues under investigation does not need to be included. If such information has been shared at investigation stage, the employee under investigation should be advised that this area is not being progressed. If the employee or their representative requests access to this information this should be made available to ensure transparency within the investigation.

## **Recording Conventions**

References to patients in any reports, notes, statements or other written evidence included in the investigation must be anonymised. This will usually be achieved by referring to Patient A / B / X / Y etc. Patient records or ward records should be redacted where these are being circulated to the appropriate parties. Further guidance on redaction is provided below. Original documents, written or photographic should be made available at investigation meetings and hearings to ensure clarity and transparency. If requested, access to the original documentation can be made in advance of any meetings to assist with preparation.

Employee information should similarly be redacted where personal information which is not relevant to the investigation is included.

## **Approaches to Redaction**

Redaction is the separation of information that can be disclosed from that which cannot by blocking out individual words, sentences or paragraphs or the removal of whole pages or sections prior to the disclosure of a document<sup>2</sup>.

The redaction of records should always be carried out in accordance with the following principles:

- Never redact the original or master version of a record - redaction must always be carried out on a new copy of the record, either in paper or electronic format
- Redaction must irreversibly remove the required information from the redacted copy of the record
- Carry out electronic redaction in a controlled and secure environment that provides access only to those authorised to carry out redaction
- Delete all intermediary stages of the redaction process. Only the original record and the final appropriately redacted copy should be retained.

# Redaction Methods

There are a range of redaction methods which may be used effectively. The method used may depend on issues such as the size, structure and content of the document, the degree of confidentiality and the amount of time available.

Whichever method is employed, the end result must ensure that the redacted material cannot be seen or guessed due to incomplete redaction. This means checking to make certain that words cannot be seen when the document is held up to light, scanned into an electronic document, or that the ends, top or bottom of text are not visible.

The recommended and simplest method of physical redaction is “Blacking Out”. This method deals with a photocopy of the original document and using a black marker pen to block out all the desired material. The redacted version should then be photocopied again to produce a final redacted version. The further photocopy is necessary as information redacted using permanent marker pens can still be read when held up to light.

## Examples of Physical Redaction

1 Examples of Physical Redaction



# Access Table

<b>Identity</b>	<b>Investigation outcomes and recommendations</b>	<b>Investigation Report</b>	<b>Statements</b>	<b>Other evidence</b>	<b>Employee's Case</b>	<b>Hearing Outcome</b>
Manager	Access	Where no Hearing is required the report will be provided when the investigation is complete. In the event of a hearing being convened this Manager will have access to the Report in time for the Hearing.	Only if participating in a Panel and then only those statements relied upon by the report.	Only if participating in a Panel and then only those statements relied upon by the report.	Only if participating in a Panel and then only those statements relied upon by the report.	Access
Investigation Manager	Access	Access	Access	Access	Access	Access
HR representative	Access	Access	Access	Access	Access	Access
Employee(s) under investigation	Access	Access	Access to those statements which relate directly to the investigation, supportive and contradictory**	Access to those statements and agreed notes of investigatory interviews which relate directly to the investigation, supportive and contradictory**	Access	Access
Trade Union Representative (supporting employee under investigation)	Access	Access	Access to those statements which relate directly to the investigation, supportive and contradictory**	Access to those statements and agreed notes of investigatory interviews which relate directly to the investigation, supportive and contradictory**	Access	Access

<b>Identity</b>	<b>Investigation outcomes and recommendations</b>	<b>Investigation Report</b>	<b>Statements</b>	<b>Other evidence</b>	<b>Employee's Case</b>	<b>Hearing Outcome</b>
Panel (Inc. Appeal)	Access	Access.	Access to those statements which relate directly to the investigation, supportive and contradictory	Access to those statements which relate directly to the investigation, supportive and contradictory	Access	Access
Complainant	Tailored access which maintains confidentiality of employee under investigation.	Redacted access	No access	No access	No access	No access
Trade Union Representative (supporting complainant)	Tailored access which maintains confidentiality of employee under investigation.	Redacted access	No access	No access	No access	No access
Witnesses	Limited access*	No access	No access other than own evidence.	No access other than own evidence.	No access.	No access
Non-accredited Companions	No access.	No access	Only information provided by the staff being accompanied.	No access.	No access.	No access
Patients / Carers	Limited access*	No access	No access	No access	No access.	No access
External Agencies	Limited access where there are obligations under statutory regulations to share information. Examples may include Child Protection, Protection of Vulnerable Adults.	Limited access where there are obligations under statutory regulations to share information. Examples may include Child Protection, Protection of Vulnerable Adults.	Limited access where there are obligations under statutory regulations to share information. Examples may include Child Protection, Protection of Vulnerable Adults.	Limited access where there are obligations under statutory regulations to share information. Examples may include Child Protection, Protection of Vulnerable Adults.	No access	No access

<b>Identity</b>	<b>Investigation outcomes and recommendations</b>	<b>Investigation Report</b>	<b>Statements</b>	<b>Other evidence</b>	<b>Employee's Case</b>	<b>Hearing Outcome</b>
Regulatory Bodies (e.g. NMC, GMC, HPCP, Disclosure Scotland)	Access	Access	Access	Access	Access	Access
The Press	No access	No access	No access	No access	No access	No access
Member of Parliament / Scottish Parliament	Limited access where employee has given written consent.	No access	No access	No access	No access	Limited access where employee has given written consent.
Legal enforcement agencies (Police and CFS)	Access where requested in line with GDPR documentation.	Access where requested in line with GDPR documentation.	Access where requested in line with GDPR documentation.	Access where requested in line with GDPR documentation.	Access where requested in line with GDPR documentation.	Access where requested in line with GDPR documentation.

## Notes

\*Limited access: For those involved in an investigation they can be advised that the investigation being conducted has concluded, appropriate action has been taken and any non - confidential recommendations may be shared.

\*\* Further clarification provided in section on Investigation Reports.

## References

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

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

<sup>2</sup> The National Archives: Redaction Toolkit ©Crown Copyright 2012