



The de Ferrers Trust

# Investigation Procedure

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To be reviewed annually

To be reviewed December 2017

## Investigation Procedure

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## General Requirements

In order to give effect to the Trust's policies and procedures there needs to be a manager in a deciding role. Such a manager is to be known as the 'Deciding Manager' to differentiate this role from that of the 'Investigating Manager'. The Deciding Manager may consider that a matter is not capable of being dealt with informally and so requires a formal investigation. The purpose of an investigation is to enable the Deciding Manager to establish, as far as possible, the facts behind any grievance, bullying and harassment complaint or disciplinary allegations in order to decide how to progress any issues through the relevant procedures. This procedure applies to employees of the Trust, referred to in this guidance as colleagues.

The form of investigation will depend on the nature of the allegations and will vary from case to case. It is important to keep an open mind and look for evidence which supports the colleague's case as well as evidence against it.

The manager leading the investigation will be referred to as the Investigating Manager for the purposes of this procedure. Investigations must be carried out by managers who have sufficient skills and experience to complete an effective investigation considering the nature of the case.

Any formal investigation must not be undertaken by anyone who is either a witness to events and/or who will oversee any subsequent proceedings.

Depending on the seriousness of any allegations the investigation may, in straightforward cases, be a short consolidation and chronology of facts or, in more extreme circumstances, necessitate a more detailed inquiry involving the gathering of complex evidence and statements. However in all cases the Investigating Manager will need to provide enough information so that the Deciding Manager can make a reasonable decision based on reasonable grounds.

Anyone involved in the investigation must be treated fairly, reasonably, and with courtesy and respect. Any investigation must recognise the need for confidentiality. Colleagues involved with the investigation are to comply with each academy's equality and diversity principles giving due consideration to any particular needs of those participating which may arise due to cultural, personal, physiological or lawfully protected characteristics or circumstances.

Any reference to 'the employer' refers to The de Ferrers Trust.

## Formal Investigations

Where a Deciding Manager initiates a formal investigation, they will identify and arrange for an appropriate person to carry out the investigation but will retain authority for the investigation process at all times. This person will be known as the Investigating Manager

If a manager undertaking an investigation is unable to continue for unavoidable reasons such as long term illness or jury service, a substitute must be nominated by the Deciding Manager within **3 working days**. Similarly where the Deciding

Manager becomes unavailable for unavoidable reasons a substitute will be nominated.

Where a Deciding Manager initiates an investigation they will brief the Investigating Manager on the following points

- Why the investigation has been instigated
- Details of any allegations which have been made
- The sequence of events leading up to the investigation
- Whether the colleague has been suspended
- When and how the colleague was made aware of the allegations made against them

The Investigating Manager should:

- Ensure that at all times they treat the investigation as confidential
- Clarify which policy the investigation is being carried out under
- Clarify the issues to be investigated and consider the Trust's definitions under the relevant policies e.g. harassment and bullying
- Consider the sequence in which witnesses will be interviewed (including the colleague under investigation if applicable)
- Consider what points actually need to be evidenced or proven
- Consider how a particular witness will contribute to the investigation
- Consider what questions need to be asked to establish appropriate facts
- Consider what other evidence they will need to review
- Arrange a note taker

It is essential to ascertain who has witnessed the events so that facts can be gathered as soon as possible and before memories fade. Any investigation should be commenced within **5 working days** of a decision to instigate the investigation.

Wherever possible, investigations into the allegations or complaint should be completed within **40 working days**. Any delays in completing the investigation must be fully documented and the relevant parties kept informed. Therefore, the nominated Investigating Manager must be able to devote sufficient time to the investigation without being distracted by his/her primary role. The Deciding Manager will monitor this and take action where necessary, throughout the investigation. Investigation meetings should be held as quickly as possible and without unreasonable delay. **A nominated Human Resources (HR) adviser must be available to advise the Investigating Manager on procedural matters and HR implications.**

At the investigation stage, if a complaint or allegation has been made against a colleague, or where a colleague is raising a grievance or a complaint, the colleague will be given a reasonable opportunity to ask the Investigating Manager to interview relevant and important witnesses and any such request will not be unreasonably denied. They must specify the name of the witness and explain the reason for the request. Where a request is refused the colleague may appeal the refusal to the Deciding Manager who will make a determination on the merits of the request. The

Investigating Manager will focus on finding witnesses whose evidence will have a specific and direct bearing on the investigation but other than the need to achieve corroboration should avoid multiple witnesses who will not add anything further to the investigation e.g. witnesses who are only going to confirm facts already established.

If the Trust Academy has reasonable grounds to suspect that the potential misconduct or complaint involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible, where appropriate.

If allegations made are anonymous, the action we take will depend on the nature and content of the allegations.

Colleagues must co-operate fully and promptly in any investigation. This will include informing the Investigating Manager of the names of any relevant witnesses, disclosing any relevant documents to them and attending investigative interviews if required.

### **Investigating Allegations against Colleagues**

The colleague under investigation is required to co-operate reasonably with any investigation but cannot be compelled to make a statement against his or her will. A colleague who is signed off sick is not necessarily unfit to be interviewed and, unless there is medical advice to the contrary, e.g. from Occupational Health, the colleague should co-operate with the investigation.

The investigation process can be stressful to all concerned. Providing appropriate support and/or counselling (if appropriate) should be considered for all parties involved in the investigation process.

Refusal to give a statement must not be viewed as a sign of guilt but the colleague must be advised that:

- Unreasonable refusal to co-operate with the investigation may in itself be considered a disciplinary matter
- The investigation will nevertheless proceed but a decision on what further action could be taken may have to be made without them having put forward their case
- Their refusal to give a statement will be recorded as part of the investigation.

The colleague under investigation must be given every chance to state their case and, therefore, will be interviewed as part of the investigation (unless for example they have been declared unfit to be interviewed). The Investigating Manager must keep an open mind and not assume 'guilt' or 'innocence'. If there is more than one allegation each should be dealt with separately, as far as possible, and the colleague must be given the opportunity to respond. **There is a right to be accompanied by a fellow worker, a trade union representative or an official employed by a trade union at investigation meetings.**

Following an interview with the colleague under investigation it may be necessary to re-interview previous witnesses (and consequently the colleague under investigation) to clarify issues.

If the colleague offers their resignation before the investigation is complete, the Deciding Manager must decide whether or not to accept it. If the resignation is accepted the Deciding Manager must decide whether to continue with the investigation process in the colleague's absence and if appropriate, take any relevant action. Where a colleague's resignation has been accepted, there may still be a legal duty for the Trust to refer information to the Disclosure and Barring Service - DBS (previously the Independent Safeguarding Authority - ISA) in certain circumstances where they may have been removed from their role if they had not resigned. Human Resources will make this referral to the DBS where they know about the case but where the above applies and colleagues leave the Trust Academy without any disciplinary finding/action the Deciding Managers will need to raise this with Human Resources to ensure the referral process is completed.

### **Surveillance and/or Monitoring**

In extremely exceptional and restricted circumstances, covert surveillance or monitoring may only be considered in order to gather evidence where criminal activity or equivalent malpractice is suspected. Furthermore it should only be deployed as part of a specific investigation and should cease once the investigation is completed. Other information collected in the course of any such investigation relating to any colleague who is not the subject of the investigation will be disregarded and where feasible deleted.

Covert monitoring will not be used in the workplace generally or specifically in places like toilets and private offices except where there is a reasonable belief based on reasonable grounds that serious crime is occurring and there is an intention to involve the Police.

Prior to undertaking any such surveillance or monitoring, the Deciding Manager must obtain express advice and specific authorisation from Information Governance Unit/HR in line with the Trust Academy's procedure and relevant legislation before any covert monitoring can occur.

### **Matters Involving Children and Other Vulnerable People**

Any concern of a child protection/safeguarding nature, pertaining to a child under the age of 18 should be considered by the Deciding Manager without delay for possible referral to the First Response Team on 0800 131 3126. They will initiate any necessary safeguarding activities, and advise upon anything additional the referrer may need to do.

Where concerns relating to a child under 18 involve the possibility of inappropriate behaviour by an adult in a 'position of trust' (e.g. teacher), or an allegation is made directly about an adult in a 'position of trust', then it is a requirement that an 'Initial Discussion' is undertaken with a Local Authority Designated Officer ("LADO") within 24 hours of the concern or allegation arising. The LADO will advise on 'next steps' including possible suspension, how the matter should be investigated and when and

who should be told about the matter. There should be no presumption that the adult should be made aware of the concern/allegation prior to contacting the LADO.

Where safeguarding concerns arise in relation to a young adult (over 18) then advice should be sought from the Vulnerable Adults team – 0845 604 2719.

Further information can be found within the Allegations against Staff Policy.

### **Physical Evidence**

Originals or certified copies of documents or other items relevant to the case such as timesheets and claims, referred to in the report, and should be attached as appropriate appendices. Objects and artefacts referred to (or certified photographs where it is not possible to produce an original item, e.g. if it is fixed or too large) should be clearly labelled as exhibits e.g. A,B, C etc so they can be identified within the report.

### **Record Keeping**

During the investigation, the Investigating Manager should keep copies of paperwork and correspondence and, after the investigation is complete, the paperwork should be attached to the personal file of the colleague who is under investigation. A copy of the outcome letter will be kept on the personnel files of all parties where applicable.

### **Dealing with Witnesses and their Evidence**

Witnesses should be interviewed in a quiet place away from their immediate workplace where confidentiality can be assured and consideration should be given to providing refreshments and comfort breaks if necessary. They should be advised that they will be required to sign any statement. They must also be advised that their evidence may be shared with the member of staff under investigation and/or their representative and that they could be asked to attend any subsequent hearing where they may be questioned. An [interview template](#) is available to support you in structuring the meeting.

Being interviewed can be stressful and the investigating manager should put witnesses at ease as far as possible and at all times treat the witness with sensitivity and respect, avoiding any temptation to interrupt. A short introduction and explanation of the allegations and what the interview is aiming to achieve prior to undertaking detailed questioning will give the witness an opportunity to settle down. The interviewer should then ask the witness to give a brief outline of their evidence which will help put things into context and identify what detailed questions should be asked. If a witness does become distressed during the interview a brief adjournment should be considered. When requesting additional information, open questions e.g. What?, when?, why?, where?, who?, how?, “tell me about...” are more likely to elicit a detailed response than questions which can simply be answered “yes” or “no”.

Evidence is weighted, not counted, unless there is a need to corroborate a particular view there is little purpose including a number of virtually identical statements from

different witnesses. Unless a colleague believes that particular witness evidence is relevant and important to the explanation of their case.

As far as is possible the Investigating Manager should be clear about what evidence they are trying to establish from a particular witness. However, the exact nature of the evidence may not be known. Therefore they should be prepared to adapt their inquiries according to the responses given and not attempt to lead the witness to give an expected answer, put words into their mouth or 'edit' their statement in a way that alters their intended evidence. Simply said, the investigation should be unbiased, investigating both angles, which may show the colleagues innocence as well as their guilt.

The Investigating Manager should endeavour to obtain 'best' evidence e.g. first hand accounts from witnesses who are prepared to give a signed statement. Evidence should be corroborated, where possible, to avoid inconsistencies. Anonymous evidence and hearsay (which relies on what a witness has been told by a third party) may be used but needs to be treated with caution and cannot be relied upon in isolation. Where anonymous evidence is to be taken the following steps will be necessary. Explore whether the witness had the opportunity and ability to observe clearly what they are asserting and with accuracy. Equally, exploring why such details are memorable. Tactful enquires are needed into whether the anonymous informant has suffered at the hands of the accused or has any other reason to fabricate their evidence.

Witnesses who wish to give anonymous statements should be advised that anonymity cannot be guaranteed if the matter proceeds. This is particularly important if the reason for them wishing to remain anonymous is a fear of reprisal or detriment. If a colleague declines to give evidence the reason should be considered and further advice sought from HR before proceeding. In some circumstances refusing to assist in a work related investigation could be considered misconduct under the Disciplinary Policy.

Non-colleagues may be invited to give evidence or make a written statement but cannot be compelled.

When the Investigating Manager is sure that all relevant questions have been asked they should ask the witness if there is anything else they wish to say in evidence. They should then briefly summarise what has been covered so the evidence can be agreed or clarified if necessary. Where possible, the evidence should immediately be transcribed into a statement. If this is not possible due to the length of the evidence the Investigating Manager should draw up the statement, a [template](#) is available, without unreasonable delay. In either case the witness must be given sufficient time to read the statement and be offered the opportunity to challenge and clarify the content of the statement. This may be necessary if the Investigating Manager has misunderstood a point the witness had intended to convey. However, if it would represent a radical change to the evidence actually given, the Investigating Manager should leave the evidence as it is but note the witness' concerns and any changes they wish to be made. Their reason for changing their evidence also should be recorded.

On completion of the interview the witness should be told that they must not discuss their evidence/statement with anyone else, particularly other witnesses or the person being investigated. Witnesses for the person under investigation may reasonably discuss their perception of events with them and/or their representative but must not directly communicate the evidence specifically given to the investigation. All witnesses should also be asked to report immediately any approach, directly or through a third party, by the person under investigation to ascertain the nature of, or attempt to influence, their evidence. Any attempt by the person under investigation to intimidate or influence a witness may be regarded as an act of gross misconduct under the Disciplinary Policy.

## **Investigation Report**

The Investigating Manager prepares a report confirming the process and findings of their investigation. The report should be in a clear and simple format and be written in plain English. The report should be written in a way that the reader can easily ascertain what has led to the investigation, what the key issues are, what the investigator reviewed and what were the findings.

The report will document what facts the investigating Manager has discovered during the investigation and will include any documents that relate to the finding of any such facts. The Investigating Manager must not speculate or make recommendations about whether a formal hearing should be convened in the case of a disciplinary matter or what disciplinary sanction may be appropriate as these are the functions of the Deciding Manager. In some circumstances, it may be appropriate for the Investigating Manager to feedback wider observations to the Deciding Manager and issues that have arisen as part of an investigation. This may include providing suggestions about what action might be taken for example training, or communications.

If the Investigating Manager feels that there is evidence to indicate that any alleged misconduct has occurred or the complaint could be considered malicious or vexatious, the Investigating Manager will report on their findings explaining why they believe that this has occurred, describing the basis for their belief and referring to any supporting evidence accordingly.

A [template](#) is available to structure the investigation report.

## **Arising from the Investigation - What the Deciding Manager Should Consider**

Factors which Deciding Manager should consider arising from the investigation include:

- The nature of the alleged misconduct or complaint (if applicable)
- The circumstances, background and context of the issues
- What witness statements reveal
- Whether there are any other facts that can clarify the situation including any relevant written or electronic records, timesheets etc
- The seriousness/effects of the behaviour / action and or its relevance to the colleagues job, team and service delivery

- Whether the alleged conduct or action reflects poorly on or brings the good name of The de Ferrers Trust into question
- Whether there are any work related factors that may have contributed to the behaviour or action such as changes to the team, job or the working environment
- Whether the colleague(s) received appropriate induction, support and training
- Whether there are any personal or underlying factors that might have affected the situation such as illness, disability, domestic or health problems, or provocation
- Whether there are any other mitigating factors
- Whether there have been previous occurrences without any action being taken
- Whether the colleague had been given any authority, on this or a previous occasion, which would lead them reasonably to believe the action or alleged conduct was acceptable.
- What the Trust's policy, procedure or guidance provide for
- Whether there is or was an established 'custom and practice' prevailing.

Having considered all the above matters, the Deciding Manager will consider whether there is a case to answer or not. The Deciding Manager may conclude that there is insufficient evidence to proceed to a formal hearing or that an appropriate response would be the application of informal counselling or additional training or else may decide to progress the matter to a formal hearing.

## Investigation Interview Template

Ensure interviews are held in a suitable venue where you can make sure you will not be interrupted.

### Introduction

- Introduce yourself and outline your role in the investigation.
- Confirm interviewee details (name, job title, length of time with XXX).
- Note date and time of interview.
- Confirm name of colleague Representative (if XXX does not have a representative, confirm they are aware of their rights to be accompanied and get agreement that they are willing to continue with the interview).
- Describe the investigation Terms of Reference.
- If an account of the interview is to be taken, confirm this to the interviewee and tell them a copy will be sent to them for verification.
- Ask if they have any questions for clarification.

### Conducting the Interview/Interview Techniques

- It is vital that any investigation is dealt with sympathetically with due regard to the feelings and emotions of everybody concerned (including the alleged perpetrator).
- The complainant should be interviewed first with the aim of obtaining as much detail about the complaint as possible
- Ensure all persons attending interviews have been notified and informed of their rights to be accompanied by a representative.
- Interview all relevant persons using open (descriptive), closed, hypothetical and probing questions as appropriate.
- Do not lead interviewees or put words "in their mouth".
- Investigate both angles, which may show colleagues innocence as well as their guilt.
- Listen carefully to what is being said and do not interrupt when people are speaking
- Attempt to note accurately what is said and probe for clarification.
- Summarise information in chunks to check understanding and/or manage the conversation.
- Repeat what is being said to ensure no misinterpretation.
- Ask for demonstrations and diagrams if appropriate that can aid you getting a full picture.
- Pay attention to detail.
- Where the complaint is one of verbal harassment, ask them to say or write the exact words spoken to them.
- Should any of the interviewees become distressed or aggressive during the interview it should be suspended for a short period or terminated.
- If it's a grievance explore with the complainant what they are seeking by way of an outcome being careful however not to make any commitments.
- At the end of the interview ask if there is anything in relation to the investigation that the interviewee wants to mention that they have not specifically been asked about.

### Conclude

- If an account of the interview has been taken by way of a statement, confirm that a copy will be sent to them for verification and signature and when it is expected to be returned. Agree where the statement will be sent to.
- Explain the plan for the investigation through to the target date for submitting the investigation report to the Deciding Manager.
- Explain potential investigation outcomes and any possible consequences for XXX.
- Request not to discuss the content of the interview – outline potential consequences if confidentiality is found to be breached.

## Statement Template

Interviewee Name	
Job Title	
Length of Service/Time in Post	
Companion	
Investigating Manager	
Location of Interview	
Date and Time of Interview	

In opening the interview XXX outlined the following points:-

- Introduction to Investigating Manager and role in the investigation.
- Summary of the reason for the interview
- Confirmation that the interview would be noted and that an account would be provided to XXX to verify its accuracy.
- XXX offered the opportunity to ask questions for clarification.

### Record of Questions and Responses

#### **Closing**

Interview finished at **[insert time]**

The interview was concluded by outlining the following points:-

- The plan for the investigation through to the initial planned date for submission of the report.
- The potential outcomes from the investigation for the interviewee.
- Requested to maintain the confidentiality of the interview.

Please tick and sign as appropriate:-

- I have made amendments on the document and agree that this is an accurate account of the interview.
- I have attached additional comments.
- I agree that this is an accurate account of the interview

Print Name: .....

Signature: .....

Date:

## **Investigation report template**

### **Example Investigation Report**

**Strictly confidential**

**1 April 2012**

**Prepared by: John Smith – Investigating Manager**

#### **1. Background to investigation**

- Employee details, job title, previous warnings etc
- Why the investigation was instigated.
- The sequence of events leading up to the investigation.
- Whether the colleague was suspended.
- When and how the colleague was made aware of the allegations made against them.

#### **2. Allegations**

Following an investigation and interviews with staff members, the following allegations were raised:

1. Downloading inappropriate material from the internet in core time.

#### **3. Summary of investigation process**

- · List of who was interviewed and when.
- · Refer to relevant appendices.

#### **4. Findings**

If the colleague faces more than one allegation, list the findings for each allegation separately.

- · Summary of background and context of the allegation.
- · What evidence there is to support, dispute or mitigate the allegation.
  
- Witness statements
- Training records
- Medical assessment/OHU or GP records
- Copy of logs / records
- Written documents
- Notes of meetings
- Memos / letters

- Existing procedure
- Any prevailing custom or practice
- The colleague's response to this allegation during your investigatory meetings.
- Whether the colleague admits or denies the allegation.
- If appropriate, whether the colleague has been offered any support; for example, if the allegation is alcohol-related, what support has Staffordshire County Council provided in relation to this problem?

## 5. Conclusions

List the conclusions of the investigation.

## 6. Summary

**Consider the following questions.**

- Are there any key issues that relate directly to Staffordshire County Council (for example, a risk to customers and staff, or loss of money through negligence or deliberate acts).
- Are there any other warnings outstanding against this colleague (verbal or written)?
- Has the colleague been offered the opportunity to improve their performance through informal support, training and so on? What were the outcomes?
- Are there any medical issues involved? What support have we offered them? What action has been taken, and what was the outcome?
- Are there any key issues that have come out of the investigation that need to be raised in the report, if appropriate?

### Example appendices

Appendix 1	Job description
Appendix 2	Letter of suspension
Appendix 3	Investigatory interview letter
Appendix 4	Witness statement – Anne Brooks
Appendix 5	Notes of meeting with Joe Bloggs