



Conducting Investigations – Code of Practice

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Date	February 2022	Review	February 2025
Review Body	ELT	Status	Non-Statutory

Details of Policy Updates

Date	Details

1. Introduction	Error! Bookmark not defined.2
2. Timeframes	2
3. Who Investigates.....	3
3a. Disciplinary allegations	3
3b. Grievances.....	3
3c. Child Protection allegations.....	3
3d. Financial irregularities.....	3
3e. Allegations/complaints against the headteacher	3
3f. Allegations of harassment or discrimination	3
3g. Specialist advice	3
4. Witness Statements.....	4
4a. Employee witnesses.....	4
4b. Members of the public.....	4
4c. Pupil witnesses.....	4
5. Process.....	5
5a. Preparation for the investigation.....	5
5b. At the start of the meeting	6
5c. During the course of the meeting.....	6
5d. Action following the investigation meetings	6
Investigation Report.....	6
5e. Submitting the investigation report	7
6. Access to Documentation	7
7. Disputed Record of Investigation Meeting.....	8
8. The Role of Employee Representatives.....	8
9. Anonymous Reports/Unsigned Statements	9
10. Third Party Evidence	9
11. Police Enquiries – including Child Protection issues.....	9
12. Gender, Equality and Disability	9
13. Whistleblowing/Code of Conduct for Employees	10
14. Appendix A.....	11

Note

The job title Headteacher is interchangeable with Head of School in all North Star Academy Trust’s Policies

1. Introduction

This code of practice will be used for all internal investigations within North Star Academy Trust, in conjunction with the relevant procedure (e.g. grievance, disciplinary). The code provides a framework within which to work. Some incidents will be investigated by those who have legal/regulatory/policy responsibilities and particular obligations to meet, for example auditors, or social workers. In these cases, the appropriate investigation processes/requirements will take precedence.

An investigation will be commissioned by the commissioning officer.

The commissioning officer will usually be the headteacher or chair of governors (unless they are likely to be called as a witness, in which case another governor will act as commissioning officer). The commissioning officer will define the terms of reference and timescales for the investigation. See section 3 below.

Investigating an allegation is likely to be stressful for all concerned. The investigating officer should explain what they are doing to everyone, what they expect and need, and focus on gathering evidence.

2. Timeframes

Investigations should start as soon as possible after the event, whilst memories are fresh, and be carried out thoroughly, fairly, and as quickly as possible, so that stress to the participants in the investigation is minimised. Investigations should be concluded within the time periods laid out in the disciplinary, grievance or other procedures. Where timescales are likely to be exceeded those involved should be informed. The disciplinary procedure imposes additional requirements where employees are suspended.

The investigating officer (with reference to the commissioning officer) should prepare by assembling any relevant documentation, determining which witnesses may be required and notifying individuals in advance (where possible).

The investigating officer should pursue all relevant lines of enquiry, whether or not these support the allegations under investigation, to assemble evidence.

3. Who Investigates

Each investigation will require an investigating officer. The person investigating should be independent (i.e. not involved in the case or complaint)

3a. Disciplinary allegations

The headteacher may investigate, or delegate to an appropriate manager (e.g. member of SLT). Delegation to a manager allows the headteacher to hear a case, should that be necessary.

An external investigator can be commissioned

3b. Grievances

The headteacher may investigate or delegate to an appropriate manager.

3c. Child Protection allegations

Before any investigation is started, specialist advice must be sought from the LADO (Local Authority Designated Officer), also known as the Designated Officer.

3d. Financial irregularities

Internal Audit should investigate and prepare a report, which will form the basis of any appropriate further action.

3e. Allegations/complaints against the headteacher

The chair of governors, or the chair's delegate (i.e. another governor)

An independent external investigator can be commissioned.

3f. Allegations of harassment or discrimination

Specialist advice and/or support should be sought. Two investigating officers may be more appropriate.

3g. Specialist advice

Contacts for specialist advice, in addition to that available from HR:

- Chief Internal Auditor, in cases involving suspected financial irregularities;
- Solicitor (Employment), in cases involving significant legal issues;
- LADO (Local Authority Designated Officer);
- Local Authority Safeguarding team.

Immediately any allegation involving Child Protection issues is made specialist advice must be sought from the LADO and the Trust's HR adviser.

Notes

The investigation should be properly documented and written up. Notes should be taken at all meetings and, wherever possible, signed statements obtained from witnesses and the employee under investigation.

The commissioning manager is responsible for arranging a note-taker.

4. Witness Statements

4a. Employee witnesses

The investigating officer should be able to interview any individuals employed within the Trust who they feel could provide useful information to assist the investigation.

Witnesses are entitled to be accompanied by a trade union representative or work colleague. They should be informed that a written record of their investigation meeting will be taken in the form of a statement, and may be disclosed to anyone they have named or identified in it. It will also be referred to in future action connected with the case, and they may be asked to attend any hearing as a witness.

Witnesses will be given a written statement of their own interview, and will be asked to sign it within a reasonable period after the interview, to confirm that they consider it to be an accurate reflection of the meeting. If witnesses or the employee under investigation will not sign their statement they should be informed that the statement will be taken as a correct record. If witnesses or the employee disagree with the contents of their statement the investigating officer should include both versions in the report, combined or separately.

Where an employee does not co-operate with a request to attend an investigation as a witness, a management instruction may be issued. Advice may be sought from the Trust HR adviser where necessary.

4b. Members of the public

If members of the public are interviewed as witnesses, their statements should be prepared and signed, or the notes of the meeting signed as a correct record.

4c. Pupil witnesses

If it is necessary to interview pupils, or former pupils under 18 years old, their parents/guardians must be advised and consent must be obtained. A parent/guardian may accompany a child during the interview, but must not answer on behalf of the child or comment on their answers.

A written record of the discussion should be agreed, to avoid the child being called as a witness at any subsequent disciplinary hearing. The decision as to whether a pupil is called as a witness will be taken by the investigating officer, in consultation with the commissioning officer and your HR provider.

IMPORTANT: please see Appendix A regarding interviewing children.

5. Process

5a. Preparation for the investigation

Where the initial information obtained does not suggest potential gross misconduct, the headteacher/governor may act both as an investigating officer and conduct any disciplinary hearing which subsequently arises. Where there are serious allegations of harassment or discrimination, or of a child protection nature, the same person(s) should not act as an investigating officer and also conduct any subsequent disciplinary hearing.

Where an independent investigating officer is conducting the investigation s/he must be given access to any papers or other information relevant to the investigation.

Requests to record an investigation meeting should be refused as it is not the Trust's practice to allow the recording of investigations.

The investigating officer should prepare a programme of meetings with the employees they need to interview, and, where appropriate, agree arrangements with the headteacher/manager for their release.

Employees required for interview should be given the notice period required by the relevant procedure and advised of their rights to be accompanied.

Where an employee requests a postponement of the meeting a new date should be arranged which is mutually acceptable to all parties, provided the new date falls within five working days of the original date. If there is no mutually acceptable date available within five working days of the originally proposed date, it is for the investigating officer to determine how to proceed. For example by asking the employee to arrange another representative or work colleague.

Judgement needs to be exercised by the investigating officer in proceeding with the investigation if employees or witnesses are not available to participate in an investigation, in circumstances where it would not be reasonable or appropriate to delay the investigation.

5b. At the start of the meeting

At the start of an investigation meeting with a witness or any employee being investigated, it should be made clear that:

- the purpose of the meeting is to ask questions relating to allegations, and to record their responses;
- assurance should be given that no opinion has yet been reached as to the validity of the allegations or to the outcome of the investigation;
- employees being investigated should be advised of the possible next steps;
- after the meeting they will be sent a record of the meeting and asked to sign it as an accurate record or, alternatively, to detail on the record any parts with which they do not agree, indicating their alternative version;
- they may be required to attend any subsequent hearings(s) as a witness, or if they may be the subject of a disciplinary hearing;
- if required the meeting may be adjourned for a short period;
- copies of their statement or extracts from it may be requested by anyone they have named or identified in it.

5c. During the course of the meeting

- The person being interviewed does not have the right to ask questions of the investigating officers, other than those relating to the investigation process itself.
- If a difference of opinion arises during the course of the meeting, the investigating officer should make a note of it but not offer an opinion.
- During the course of the investigation, the investigating officer may recall the employee being investigated or any witnesses, to obtain clarification on any points or ask further questions.

5d. Action following the investigation meetings

Statements should be sent to everyone who has made one, and return requested within a reasonable timescale (usually five working days).

The investigating officer should use all the information gathered to prepare a report for consideration by the commissioning officer including conclusions based on the balance of probabilities.

Investigation Report

The report should include:

- an introduction;

- the name of the investigating officer;
- the allegations under investigation;
- process undertaken;
- details of issue investigated;
- people interviewed;
- any specialist advice taken;
- issues of consistency/inconsistency;
- any explanation/circumstances in mitigation;
- any conclusions (based on the balance of probability);

In the case of disciplinary investigations, or investigations into harassment/discrimination grievances, a recommendation as to whether or not there appears to be a case to answer, and proposing (in the opinion of the investigating officers), that the manager should/should not convene a disciplinary hearing.

In the case of investigations into allegations of a **child protection** nature, the findings in the Investigation Report must be documented to one of the following for each allegation:

Substantiated: there is sufficient evidence to prove the allegation;

Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;

False: there is sufficient evidence to disprove the allegation;

Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

Unfounded: to reflect cases where there is no evidence or proper basis which supports the allegation being made.

(from Keeping Children Safe in Education – Statutory guidance for schools and colleges September 2021 para 381)

5e. Submitting the investigation report

The report should be presented to the commissioning officer, who will then inform appropriate parties of their decision and the next steps.

6. Access to Documentation

If the issue is to be considered at a disciplinary hearing the employee being investigated/subject to disciplinary action will be given a copy of the report as part of the documentation made available to him/her. In employee grievances the complainant will

not receive a copy of the report, but will be advised as to whether or not the matter will be pursued in accordance with the appropriate trust procedure. The complainant will not be given any details, other than whether any formal action has/has not been taken.

Access to all relevant information within statements should be granted upon request to the complainant. Exceptionally statements may be edited/ access refused, e.g. to protect the identity of vulnerable adults and children, or to avoid a breach of the Data Protection Act. Where a disciplinary hearing is held, the employee will normally have access to all these documents.

Access to any documentation is subject to the requirements of the Data Protection Act 1998.

7. Disputed Record of Investigation Meeting

The investigating officers should, wherever possible, ensure that the content of any witness statements/record of meeting is agreed with the individual concerned. In the event that a record of an investigation meeting is disputed by the individual concerned, the investigating officer should either amend the notes (if s/he agrees with the individual's proposed amendments), or indicate in the notes that the individual disputes the investigating officer's version (highlighting the areas under dispute). If a large amount of the notes are disputed, or if it will be clearer, two versions of the statement can be included in the report. This is a decision for the investigating officer to make.

8. The Role of Employee Representatives

Before the investigation starts employees under investigation should be informed of their right to be accompanied and the role of a trade union or professional representative/work colleague.

The trade union or professional representative/work colleague may raise questions on procedural matters or request clarification of the process, and respond on behalf of the employee to any views expressed, but they do not have the right to answer questions on behalf of the employee, address the meeting if the employee indicates that s/he does not want their companion to do so, or prevent the employee from answering questions. They may confer with the employee during the meeting. They may also request a short adjournment in order to do so.

The responsibility to ensure that a trade union representative/work colleague accompanies them at an investigation lies with the employee.

9. Anonymous Reports/Unsigned Statements

Where a manager receives anonymous information concerning an employee it should be treated with extreme caution.

Anonymous information may lead to an investigation, which reveals facts on which further action can be based. Anyone against whom an anonymous allegation is made should normally be informed that a complaint has been received and be invited to comment. The final outcome of any discussion or investigation should be documented.

Any anonymous letters received should immediately be placed into a clear plastic wallet to enable the police to examine it for finger prints etc. should the letter turn out to be malicious or worthy of a police investigation.

10. Third Party Evidence

Some investigations may involve taking third party evidence from members of the public, councillors or other persons (e.g. contractors). The same principles should be applied to third party evidence as is applicable to other evidence.

11. Police Enquiries – including Child Protection issues

It is important that any police investigation is not prejudiced by an internal investigation. Neither should a police investigation prevent a management investigation (and subsequent hearing) taking place before the police investigation is completed, but agreement should be sought from the police before undertaking any internal investigatory action.

Where there are Child Protection allegations the LADO must advise on the appropriate way forward before any investigation starts, and before an employee is made aware that allegations have been raised against them, or at least the nature of the allegations (to protect potential witnesses).

Should the police drop their investigation, an internal investigation should still take place/continue. The burden of proof required to take action as a result of an employer's investigation is lower than that required by criminal law. Advice should be sought from the Trust HR adviser and/or the LADO before making a decision.

Audit advice should be sought on the best way forward regarding financial matters.

12. Gender, Equality and Disability

Where sensitive complaints of race, sex or disability discrimination/harassment are being investigated, you should consider the gender and race balance of the investigation officers.

13. Whistleblowing/Code of Conduct for Employees

Some investigations may arise as a consequence of “whistleblowing”. Should this occur, please seek advice from the Trust HR adviser.

Please contact the Trust HR adviser for advice and guidance on this Code of Practice.

14. Appendix A

Interviewing children and young people

Questioning of pupils needs to be sensitively handled. A pupil should not normally attend a hearing in front of a panel. All meetings should be in comfortable familiar settings with familiar adults present. These can be identified by the pupil, or the parent/carer in discussion with younger pupils (and maybe teacher).

The purpose is to find out what happened. It is not to ask a pupil what they thought or felt and to have their information verified by other sources eg other pupils, adults etc. The pupil should not be told who else will be approached as this could affect the quality of their replies.

For certain age ranges, it is preferable for the investigating officer to be a senior teacher, or for a senior teacher known to the child to be present/observing. The presence of a recognised authority figure may lead to a more considered response from young people.

It is important that the investigating officer has appropriate skills for interviewing younger children, and training for investigating officers is essential.

A record should be made of:

- what was asked
- who was present
- the responses (in the child's own words)
- the date, time and length of the interview

Depending on the pupil's age, they should be allowed to read and sign a copy of the evidence. For younger pupils, their parents/guardians could sign to agree that this was what their child said. If a parent disagrees with what is recorded, the investigating officer can record the disagreement.

If a parent raises concerns about the procedure the investigating officer can record these. If the parent wishes to complain about the procedure the headteacher or other appropriate senior manager can make a judgment on whether it was followed correctly.

It is important that the pupil knows that the investigator will take their comments seriously. They should be given reassurance that they should not feel guilty, and should be told what will happen as a result of them being interviewed. Reassure them that nothing will be held against them for having reported the incident or what they saw or heard etc.

Points to consider

Interview each pupil individually.

Try to remove all contact with other pupils until all interviews have been completed.

Do be accessible and receptive.

Listen carefully and ask open questions to clarify (e.g. who, what, when, here, how).

Open questions/statements include:

- would you like to tell me what happened?
- can you tell me where/when this happened?
- would you like to tell me who was involved?
- can you tell me what happened next?
- is there anything else you would like to tell me?
- thank you for telling me this, but you do realise that I will have to do something about it.

Don't lead the pupil e.g. don't start the interview by saying you are looking into an incident with X in the IT suite – start by asking when the pupil was last in the IT suite and what they were doing in there. Then establish if they can remember who else was there, and if necessary whether X was there. If they can/can't remember, ask how they can be certain of this i.e. what happened to make them remember that X was/wasn't there.

Don't ask leading questions:

- was it your teacher/coach/friend that did this to you?
- are you sure that's what happened?
- why did you let them do that to you?
- why do you think this happened?
- I expect you must be very upset about this.

Younger pupils may prefer to talk and draw at the same time or even do a drawing of what happened and talk it through.

Diagrams may be used where appropriate e.g. to clarify statements.

At the end of the meeting the adult should go through what has been said or written (in a way respectful of the needs and understanding of a child), allowing them to make any extra comments or change things. The written record should be made in the pupil's own words, and the parents/carers will need to know that a copy of the statement/notes of the pupil's

evidence will be made available to the relevant people, including the accused employee. They should be prepared for the fact that you must involve others, and that they may be interviewed by other people. At the end, the pupil should be asked if they are happy with what has been written.

It is important that the investigating officer reports all suspicions or disclosures immediately to the Trust.