**Conducting Formal Investigations Guidance**

1. **Aim** 
   1. A thorough and independent investigation carried out fairly and consistently will provide managers with the necessary facts and evidence on which appropriate decisions can be made. Where disciplinary action may be taken, it is important for the University and the individual that all facts have been considered impartially.
2. **When should investigations be used?**
   1. Investigations should be used where there are grounds for considering disciplinary action against a member of staff. The purpose of the investigation and the report is to collect all relevant information on the matter and set out what facts are considered to be established. This enables a decision to be taken by the manager, with advice from People & Culture, as to whether there is a case to answer and whether the matter should proceed to a formal hearing. The report will then be considered as part of the hearing.
   2. Formal investigations will not be carried out in response to a capability issue or a grievance, unless the grievance issue relates to bullying or harassment.
3. **Who should conduct the investigation?**
   1. The investigation should be undertaken by an Investigating Officer appointed by the line manager or Head of Department/Section in consultation with People & Culture. The Investigating Officer may be from the same department/section but they should be more senior than the individual being investigated and not their line manager.
   2. The Investigating Officer would normally be advised by a representative from People & Culture during any investigation. This may take the form of an initial briefing session and being on hand to provide advice, or attending meetings with witnesses where the case is more complex.
   3. In order to demonstrate impartiality the Investigating Officer should have had no material prior involvement in the events or allegations under investigation, and should declare any potential conflict of interest that may disqualify him or her from conducting the investigation.
4. **Preparing for an investigation**
   1. Before commencing the investigation, the Investigating Officer should meet with People & Culture to be briefed on the case and the guidance.

They will need to:

* Ensure they are familiar with this guidance and with the Disciplinary Procedure.
* Identify details of the precise issue to be investigated, e.g. details of allegations made, copies of policy or policies breached, what questions the investigation needs to answer.
* Have details of all witnesses and an agreed order in which to meet them (see below).
* Agree timescales for completion of the investigation including completing the investigation and producing the final statement of case. (Where timescales slip these should be recorded together with the reasons for the delay)

1. **Conducting investigation interviews**
   1. The Investigating Officer must plan to interview any person identified who may be able to provide information relevant to the investigation. This would include the individual accused, witnesses to the alleged incident or behaviour, and any other person who is identified to have information relevant to the investigation.
   2. Where an individual or individuals are the subject of the investigation they should be notified at the earliest possible stage that an investigation has commenced, and the nature of the allegations/issues. This should be done by the line manager / Head of Department.
   3. Where possible the witnesses should be interviewed in a logical manner, in which ideally the person raising the issue / allegation should be interviewed first, then the respondent, and then the witnesses. Witnesses should normally be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses are likely to be identified during the investigation and must also be interviewed by the Investigating Officer. If the investigation officer decides not to interview a particular witness or is unable to interview a particular witness she should be recorded as part of the investigation including the reasons why no interview occurred.
   4. All witnesses must be advised of a suitable meeting date and be given reasonable notice. Although there is no statutory right for a workplace or Trade Union representation to be present at the investigatory meetings, this will be allowed if a member of staff would like such support. The witness should be advised that the purpose of the meeting will be to discuss in detail their account of a particular incident / allegation.
   5. In preparation for the investigation interviews the Investigating Officer should:

* ensure that a suitable private room is available to hold the interview meeting confidentially and without interruptions;
* ensure that all necessary information is available during the course of the meeting;
* prepare a list or structure of questions in relation to the alleged incident/allegation (if this is appropriate);
* Where possible investigation meetings should be recorded, and the recordings made available to any subsequent hearing. If the individual being interviewed refuses to a recording a nominated person should be available to take detailed notes of the meeting.

5.6 The structure of the investigation interview should normally be as follows:

**Introduction**

* Explain the context of the interview.
* Advise for what purpose the meeting notes and subsequent statement will be used, and that it will be seen by both the complainant and respondent;
* Explain how and when the interviewee will be able to check the notes / statements;
* Stress the importance of confidentiality.

**Questioning**

* Use open questions (who, what, why, when, how etc.) with closed questions being used to clarify points. Leading questions should always be avoided;
* Discuss and enquire into any additional information/evidence presented whilst always returning to the prepared list / structure of questions (if used);
* Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. ‘bullying’ or inappropriate behaviour’ etc;
* If there are documents or witness evidence which is inconsistent, raise this and seek an explanation;
* Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answer any appropriate questions or concerns raised.

**Closing Statement**

* Explain the next steps, confirming how/when the witness statement is to be prepared and verified and when the investigation is expected to be completed;
* It is important also that witnesses understand that there may be a need for them to attend a formal hearing.
* Ensure the contact details of the Investigating Officer are provided, and ensure confidentiality understood.
  1. Where possible investigation meetings should be recorded, via zoom or via an audio recording. Where this is not possible notes may be taken and ideally be typed and shared with the witness. Witnesses should be made aware that the investigatory notes are not verbatim and are instead a record of the discussion. They must either indicate that this is an accurate reflection of the meeting or they must indicate where they disagree. Witnesses should be advised that if they wish to make any amendments to the written notes these should be included in a separate document. In such cases the amendments should be provided alongside those notes taken by the investigation officer or their scribe.
  2. The witness may provide a written statement instead of or in addition to an interview. This may be prepared with their Trade Union or workplace representative. In these cases the statement should be checked by the Investigation Officer and included in the Investigation Report alongside the notes from the investigation meeting for points of clarity.

1. **Preparing an Investigation Report**
   1. All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Statement of case. This may include witness statements, notes/recordings from investigation interviews, relevant policies and procedures, a timeline of events, evidence of custom and practice etc. This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider. The Investigating Officer should be mindful of document management issues ensuring that original documents, including hand written contemporaneous notes, are maintained as master file copies, and that information on the source of a document is noted appropriately.
   2. An investigator should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. The investigator will need to decide whether, on the balance of probabilities, they could justifiably prefer one version of the matter over another and explain why.

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| The investigator is not required to demonstrate the facts beyond all reasonable doubt but whether on the balance of probabilities an incident is more likely to have occurred than not. |

* 1. In evaluating evidence, each case should be judged on its merits; however, the following points should be considered:
* direct witness evidence will usually be stronger than indirect information relating to the incident/allegation;
* evidence which is inconsistent with documents produced at the time is questionable;
* evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable;
* anonymous evidence received should be reviewed with caution as it is often difficult to substantiate;
* consideration should be given to any bias, motivation or influence individual witnesses may have;
* where possible the factual accuracy of points raised in witness statements should be verified by the panel if they are material to the allegations.
  1. A Statement of Case should be written by the Investigating Officer and should normally be structured as set out in Annex 2:

*Introduction/Summary*

* Summary of the alleged misconduct
* How the allegations of misconduct fall under the disciplinary procedure

*Background*

* Employment of the individual at the University
* Responsibilities of the individual
* Context of the incident

*Policy & Procedures*

*People involved in the investigation*

*Investigation*

*Findings*

* Summary of written and physical evidence
* Summary of witness evidence
* Facts established
* Facts that could not be established
* Mitigating Factors
* Other relevant information

*Conclusion*

* Summary of evidence and facts established
* Any other points

*Recommendations*

*Supporting documents*

* All documents collected as part of the report
  1. Once the Investigating Officer has finalised the statement of case, it should be sent to the Head of Department for consideration (with a copy given to the supporting People and Culture link). Based on the findings of the report, the Head of Department (supported by People & Culture) will decide whether or not any action needs to be taken, acting in accordance with the Disciplinary and any other appropriate University policy.

1. **Dealing with Difficult Issues**
   1. Inevitably during the investigation process unexpected events occur, which fall outside of the terms of the investigation. These may be dealt with as follows:
   2. **Further or counter allegations**: If the allegations relate directly to the current investigation or substantiate other information the Investigating Officer must make the decision about whether to include these in the current investigation. If the allegations do not relate, or are made against other parties, these should be dealt with separately from the investigation.
   3. **Confidentiality**: The Investigating Officer must ensure that all witnesses and those interviewed understand how the information they provide will be used. If a witness asks if what they disclose can remain confidential, the Investigating Officer should explain that if it is important and relevant to the investigation, it will be included in the report; however, appropriate confidentiality will be maintained. If there are issues relating to the level of confidentiality required by a witness, then the Investigating Officer will agree an appropriate way forward on this with the witness, where possible.
   4. **Refusal to Participate:** If the employee against whom an allegation has been made refuses to participate they should be informed that, unless they provide information, either in person during an investigation meeting, or in writing in relation to the allegations, a decision may be made based only on the information provided to the Investigating Officer. It should also be made clear that staff have a contractual obligation to co-operate and refusal to do so, may lead to disciplinary action. It is essential that this be communicated verbally (where possible) or in writing, giving the employee time to reflect and respond appropriately. It is important to offer support to all parties involved, and keep them informed, throughout the process.
   5. **Refusal to Participate (witness):** If a witness refuses to participate it is important that where possible the Investigating Officer meets with the witness to find out the reasons behind why they do not wish to participate, to discuss the process which will be followed and provide reassurances of the support which will be available to them. Dependant on the case in question, it may be possible to continue the investigation even if the witness refuses to make a formal statement.
   6. **Dealing with witnesses who are students:** In some cases, one of more of the witnesses will be students at the University. For example, a student may have made a complaint of harassment. It is important to be sensitive in these cases and explain thoroughly why they are being asked to participate as a witness and to discuss any concerns they may have. It is unlikely to be appropriate to invite a student to give evidence at a hearing. A decision will be made on a case-by-case basis, taking into account other facts such as whether it is term time, exam period etc.
   7. **Dealing with a member of staff who is absent during an investigation**: If a member of staff is unable to attend an investigation due to sickness it does not mean that the investigation should be unreasonably delayed. Where a member of staff is absent for a short period of time, the Investigating Officer should arrange an alternative date for when the member of staff will be back at work and the investigation should proceed as normal. During a longer period of sickness absence, the member of staff may still be interviewed if it is reasonable to do so (fitness to participate in the process may be sought from Occupational Health. If it has proved impossible to interview the member of staff who is on sick leave, the Investigating Officer should close the investigation and make recommendations without the input of the member of staff.
2. **Following the investigation**
   1. If the matter proceeds to a disciplinary hearing, the investigating Officer will be invited to the hearing to present the evidence. The investigator’s contribution must be limited to presenting and commenting on the facts and must not give an opinion on the outcome of the hearing.

**Annex 1 - Tips for Investigating Officers**

**Preparation checklist**

* Prepare questions (if appropriate), but be flexible about asking additional questions or amending them as new information comes to light;
* Be familiar with the facts of the issue and sequence of events beforehand;
* Prepare a chronology;
* In advance of the meeting, provide the witness with any documents that may act as a memory prompt or help him or her to give evidence;
* Be open to answering any queries that the witness might have prior to the meeting particularly as some witnesses might be nervous about the proceedings.

**Do’s and don’ts**

* **Do** allow the witness to refer to any documents to refresh his or her memory;
* **Do** pause the meeting if the witness needs a break, or adjourn it if the witness is very upset;
* **Do** record all the pertinent facts, e.g. dates and times, names and context of behaviour; You may find it easier to have a separate note-taker to accompany you.
* **Do** keep calm and focused;
* **Do** remind the witness to keep the matter confidential;
* **Don’t** be afraid to question the witness’s version of events;
* **Don’t** encourage the witness to offer his or her opinion;
* **Don’t** offer your own opinion, be judgmental or speculate on the outcome of the investigation
* **Don’t** draw hasty conclusions
* **Don’t** disclose any confidential information

**Interviewing Tips**

Useful open questions to use as part of an investigation interview could be:

* Can you take me through these events in your own words giving as much detail as possible;
* How did you feel / how did that make you feel?
* Why did you do / say that?
* Were there any witnesses to the occurrence that you are aware of?

Leading questions should generally be avoided, e.g. ‘did she shout at you?’ unless there is no other way of finding an answer to the question

**Annex 2**

**Disciplinary / Capability / Bullying & Harrassment / Appeal Statement of Case**

**Introduction/Summary**

This should be a summary paragraph detailing who is completing the statement of case, the date it started and the matter that has been investigated. Please write which policy the investigation is being conducted under. If misconduct, it is useful to reference the type of misconduct being investigated (examples of misconduct can be found in Annex 1 of the relevant Disciplinary Procedure). You may want to list the key questions that were the focus of the investigation.

In law there are always exceptions, but generally, when the defence must prove something, it is to the level of “the **balance of probabilities**”. This is simply a matter of “more probable than not”, or if you prefer figures, say 51% or greater.

**Background**

**Name:**

**Job Title:**

**Employed by:** University of Essex or University of Essex Campus Services or Wivenhoe House

**Length of service:**

**Main Duties of the role:** Job Description in Appendix XXX **Current grade:**

Write the context of the incident, including any previous action taken informal or formal. You may also wish to comment on any factors that may have influenced events e.g. previous restructure (job or management change), health issues, team dynamics, and environmental factors.

**Policy & Procedures**

Here detail any policy and/or procedures in addition to the disciplinary/capability policy (detailed in the summary) that are relevant to the case, for example Social Media Policy or a local departmental procedure for dealing with a particular circumstance.

**People Involved in the investigation**

Provide details about the other people involved in the investigation

Name, Job Title, Time at the University

**Investigation**

Here you should detail who you interviewed and when as part of the investigation and who you did not speak to and why?

What evidence you have collated and looked at.

Explain any delays in the investigation i.e. wanted to speak to witness X but attempted to contact them on several occasions they chose not to participate.

**Findings**

Following the investigation, summarise what were your findings. You can reference appendices rather than going into full detail.

Or copied from Investigation Report:

**Summary of written and physical evidence:** summarise each document contained, set out how the evidence supported or did not support your findings and why

**Summary of witness evidence:** [name and summarise each witness statement, quote from statement where relevant, set out how the witness statement supported or did not support your findings and why]

**Facts established:** [this will include uncontested facts and contested facts, where the investigator should determine what, on balance of probabilities, took place]

**Facts that could not be established**: [detail any part of the investigation that was inconclusive e.g. where any claims were made that could not be substantiated]

**Mitigating factors:** [detail if there were any mitigating factors uncovered that are relevant to the investigation]

**Other relevant information:** [detail any other information that is relevant to the matter]

**Conclusion**

Brief summary of the evidence and the facts established and whether you feel the allegations are proven/supported by the evidence based on the balance of probabilities (not beyond reasonable doubt).

**Recommendation** (Optional)

You should not recommend what formal action should be taken but detail here any recommendations that are outside policy. Examples are:

* Training in XXXX
* A review of internal processes
* Mediation between X and Y
* Regular 1-1 meeting between manager and X
* Update of a policy

**Relevant Policy Links** (delete as appropriate)

UoE:

[Disciplinary procedure](https://www.essex.ac.uk/staff/managing-people/disciplinary-procedure) (if misconduct occurs)

[Capability procedure](https://www.essex.ac.uk/staff/managing-people/capability-procedure) (if someone is underperforming or lacks the capability to complete their work)

Complaints of bullying or harassment procedure (pdf 143.9kb)

[Student complaint about staff process](https://www.essex.ac.uk/staff/student-feedback/concerns-and-complaints-about-staff)

[Appeals procedure](https://www.essex.ac.uk/staff/employment-policies-procedures/appeals-procedure)

UECS:

[UECS Disciplinary Procedure](https://www.essex.ac.uk/-/media/documents/directories/human-resources/uecs/uecs-disciplinary-procedure.pdf)

[UECS Capability Procedure](https://www.essex.ac.uk/-/media/documents/directories/human-resources/uecs/uecs-capability-procedure.pdf?la=en)

**Evidence (incl witness statements)**

Appendix A Disciplinary Procedure

Appendix B Job Description

Appendix C

Appendix D

Appendix E

Appendix F

Appendix G