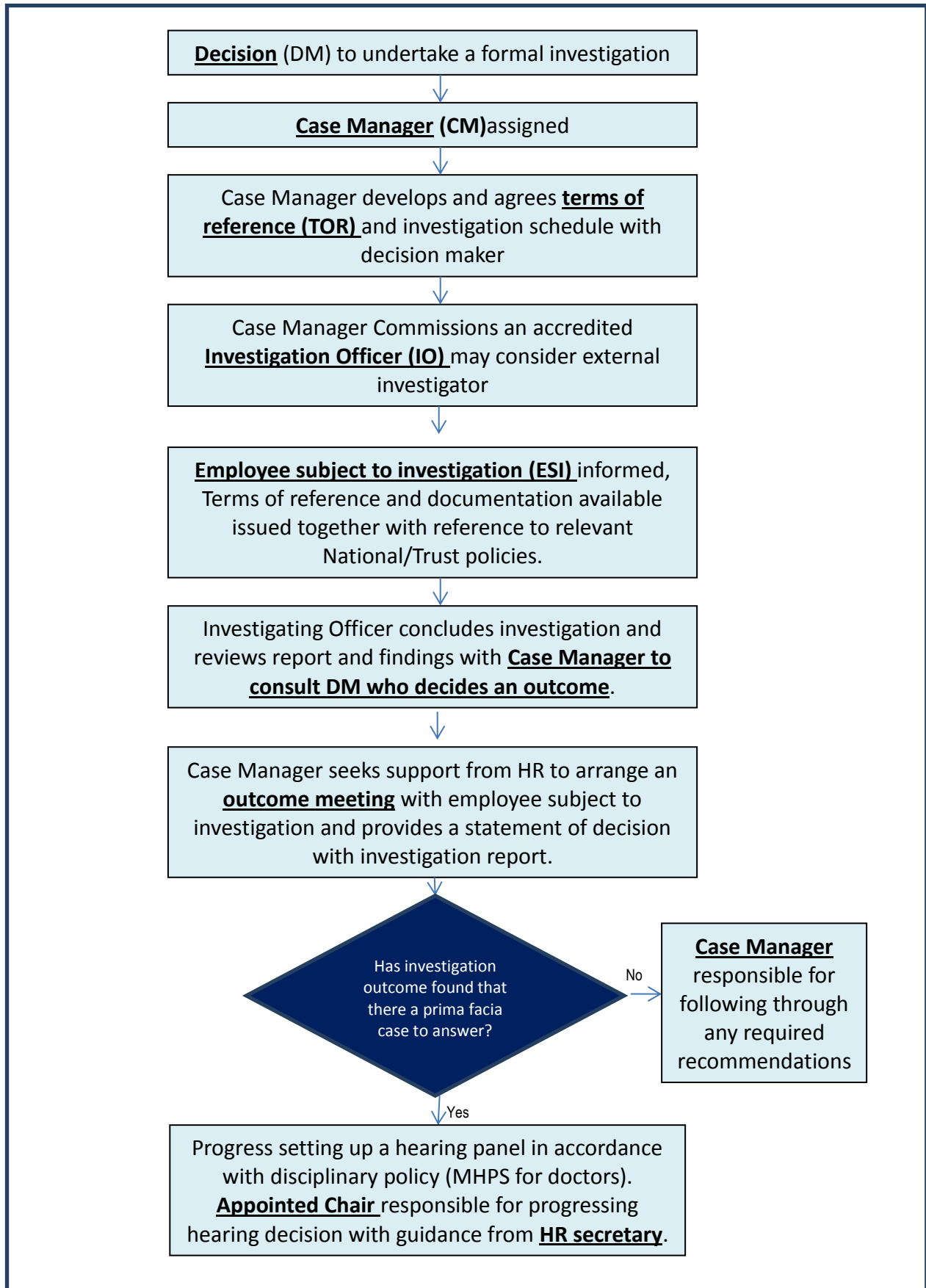


INVESTIGATION GUIDANCE  
ROLES/RESPONSIBILITIES AND REQUIRED STANDARDS



## THE DECISION TO INVESTIGATE

There are many ways in which performance concerns are reviewed at Blackpool Teaching Hospitals NHS Foundation Trust, such as local performance management, complaints from patients and colleagues, appraisal, reports on serious untoward incidents and anonymous complaints or concerns. Anonymous reports can be difficult to verify but are not normally dismissed in some cases where concerns find evidence to be in the interest of the public these could progress with formal action.

### Who is responsible for making a decision to investigate?

For all doctors Maintaining High Professional Standards (MHPS) should be applied, a decision should always be made by Medical Director or Lead Employer in the case of trainees, and followed up with a referral to NCAS. The Medical Director has the authority to delegate Case Manager Responsibilities to any trained representative from the Medical Management Team. NCAS Good Practice Investigation Guidance standards should be applied to all investigations.

Once a decision has been made to investigate, the decision maker must remain impartial and hand over responsibility for the investigation to a Case Manager who's responsibilities are outlined in the next section page 4. The responsible manager for making the decision to formally investigate is identified as the decision maker (DM) within this document.

**What should be considered in making a decision to investigate?** Before a decision is made to progress a formal investigation, the responsible senior manager must consider what other relevant information is available.

This list is not exhaustive and could include:

- Clinical or administrative records;
- Serious untoward incident reports or complaints;
- Earlier statements or interviews with people with first-hand knowledge of the concern;
- Clinical audit and clinical governance data;
- The views of appropriate professional advisers;
- Earlier occupational health reports;
- Trainee Student Support Committee (TSSC) reports

The objective is to determine whether an investigation would be likely to produce information which is not already available, not to begin the investigation process itself. There will normally need to be input from the employee who could potentially be the subject of a formal investigation, see where this would not be appropriate\*

When a case for a trainee is being considered as a formal investigation the service manager should seek advice from the named divisional medical workforce advisor, and clinical supervisor to review the relevant information for the case, and assess all responsibilities as outlined within the trainee in difficulty guidance have been fulfilled before escalation to the Lead Employer for a decision.

It is important that the process is transparent early communication about the performance causing concern can obtain in some cases reasonable explanations for concerns and early interventions to better performance can be found. The employee's early response will be helpful in deciding whether to carry out an investigation.

*\*Contact with the employee who could potentially be subject to a formal investigation may not be appropriate if a counter fraud agency or the police advise that early meetings or early disclosure could compromise subsequent investigations.*

**What are the alternatives?** An Investigation may be considered unnecessary if:

- The complaint or allegation(s) do not have a substantial basis or are comprehensively refuted by other available evidence.
- There are clear and reasonable grounds to believe that the reported concerns are frivolous, malicious or vexatious. It is important that those that are not genuine are identified as soon as possible to avoid distress to the employee subject to these claims and to ensure that the valuable time is not detracted from the provision of patient care. In this case seek advice from the HR Director/Head of Medical Workforce to manage any potential action to be taken against the claimant.
- In some cases there may be some evidence of concern, the decision may still be to dispense with the investigation under the following circumstances:
- The employee may agree that the concerns are 'true' and agree to co-operate with required further action. However, if the issues raised are serious enough (gross misconduct) to suggest that if upheld may result in termination of employment through potentially serious breaches to Trust policies and professional standards, that would require a formal investigation.
- An investigation may also be judged unnecessary if the concerns are being investigated by another agency. An external investigation does not automatically preclude a local investigation but we should have reasons for carrying our own investigation into different aspects of potentially the same concern. There should then be close liaison with the other agency to avoid one investigation being compromised by the other.

The decision to proceed or not proceed with an investigation requires completion of a decision to investigate form as seen in **appendix 1**, with reasons, along with decisions on any alternative actions decided on and the authority to suspend or exclude is obtained from the Medical Director (Lead Employer for trainees).

**When is an investigation likely to be appropriate?** An Investigation would be appropriate where case information gathered to date suggests that the employee may:

- Pose a threat or potential threat to patient safety;
- Expose services to financial or other substantial risk;
- Undermine the reputation or efficiency of services in some significant way;
- Work outside acceptable practice guidelines and standards.

In deciding to go ahead with an investigation the decision-makers should have a clear view on the allegations against the employee that are a concern. The decision-makers may delegate the development of the terms of reference (TOR) to their delegated Case Manager and provide approval to the TOR before the investigation starts. The terms of reference should also set report expectations and timescales as well as references to any potential breaches to GMC Good Medical Practice, Trust Policies and Contract of as seen in the template provided in appendix 2.

Before the investigation can proceed, the decision makers should consider; if protection for the people who will be involved in the investigation in any capacity is necessary. A formal investigation of an employee is likely to impact on patients, and the employee's staff and colleagues, expert and other witnesses, and the managers taking part in the investigation.

Decision makers will be satisfied that the appropriate decisions/ actions are in place to:

- Protect patients from harm;
- Protect people raising concerns;
- Keep patients informed;
- Support the employee;
- Protect the organisation.

Suspension or exclusion should only be used where there is no reasonable alternative eg temporary redeployment, restricted duties. When a decision is made to suspend or exclude authority must be obtained from the Medical Director (Lead Employer for trainees) to progress see **appendix 1** where a signature is required.

These measures are often described as 'neutral' acts intended to protect patients, staff and the employee, and not to be disciplinary sanctions. In practice, the employee – and possibly colleagues – may see them differently. The decision maker/ case manager should seek advice from the Director of HR/Head of Medical Workforce if there is any doubt about making this decision.

## **THE ROLE OF THE CASE MANAGER**

The decision maker is responsible for assigning a Case Manager. It is the responsibility of the Case Manager to manage a fair and factual investigation outcome, in accordance with the Timeframes detailed within the relevant Trust Policies, SUI Clinical Governance, Disciplinary, Grievance, Bullying and Harassment and the nationally agreed Maintaining High Professional Standards (MHPS) for doctors.

The Case Managers role is to:

- Ensure that the investigation is conducted efficiently and managed to the required timeframes of policies;
- Ensure that confidentiality is maintained where appropriate;
- Act as the coordinator between investigators, the employee and anyone who the investigators need to interview;
- Obtain and allow access to any documentation required, eg patient records;
- Ensure that the process is properly documented to the standards outlined within the appendices, policies and national frameworks;
- Review and receive the investigator's report;
- Make recommendations to the Decision maker on what action might follow, having reviewed the investigator's factual report.

The case manager should have no real or perceived conflict of interest in relation to any aspect of the investigation. Case managers need to be objective and able to demonstrate that they:

- Understand the general nature of the concerns raised and the clinical and/or work contexts in which they occurred;
- Are senior within the organisation to secure the co-operation of other staff members;
- Are competent in the application of local policy for investigating concerns and related procedures;
- Are accredited to NCAS good practice investigation procedures and have experience in undertaking formal investigations;
- Know when and how to access to relevant advice and expertise from colleagues within the organisation;
- Know when and how to access relevant external experts and authority to instruct them;
- Dedicate the necessary protected time to support the investigation.

MHPS requires that the Medical Director should act as case manager for cases involving Divisional Directors, Heads of Department and Consultants Blackpool Teaching Hospitals NHS Foundation Trust allows delegation of this role to any trained representative from the Medical Management Team.

The Case Manager will review the complaint/allegations to determine the skills and competencies required to commission a suitable investigator. The case manager may decide to engage an external investigator depending on the complexities of the case and time commitment required to deliver an investigation with the required timeframe.

## THE ROLE OF THE INVESTIGATING OFFICER

Investigating Officers have been trained and are competent to undertake investigations and are senior staff, there could possibly be more than one investigator if expert clinical review is required. The investigator's role is to collect and examine relevant evidence and complete the investigation in line with its terms of reference and these required standards. The investigator will ask the employee for a response to the complaint/allegations raised, and resolve any conflicts of evidence; determine the facts and produce a report which accurately captures all relevant details and findings. All investigators also have a duty to maintain confidentiality and ensure that the investigation is documented to the required standards as outlined within this guidance, supporting policies and national frameworks.

Blackpool Teaching Hospitals NHS Trust have a register of accredited trained internal investigators but occasionally, the Case Manager may decide it is necessary to commission an external investigator or expert where a suitable person is not available internally depending on the complexity of the case. All investigators must be asked to confirm at the outset that there are no real or perceived conflicts of interest disqualifying them from doing the work in question.

When asked to undertake an investigation, an investigator should be able to demonstrate that they:

- Have the skills and expertise to conduct the investigation. In the event that the nominated investigator does not have a relevant clinical background they should ensure that they obtain appropriate 'expert' advice where issues of clinical judgement are raised. If there are no other senior clinicians with the relevant expertise, advice should be obtained from the Case Manager to engage a senior clinician from another NHS organisation;
- Understand the work context of the employee;
- Have dedicated time to complete the investigation and report in a reasonable timescale.

**Collection of evidence:** Evidence collected through the investigation process may have to be presented by the Investigation Officer at internal and external hearings and needs to be factual and impartial. Evidence includes written materials such as patients' clinical records and other organisation records, documentation such as previous appraisals or other information held on the employee's personal file which is relevant to the investigation, as well as oral and written evidence provided by witnesses to specific events and any other relevant factual information.

An investigation will often then begin with a planning meeting between the case manager and investigator(s) to determine, for example:

- What documents need to be seen;
- Who will be interviewed;
- How to manage administration of the investigation;
- Means of communication with the employee;
- Other logistical issues.

The investigating team will need to take a view on whether patient records need to be accessed to assist the investigation. Normally this will require prior patient consent but in certain circumstances there can be a public interest justification for disclosure without consent. It may be necessary to take advice from the Director of HR /Head of Medical Workforce.

Once collected, evidence must be stored safely and kept securely as scanned adobe files to deter any possible attempts to alter files. Should the employee under investigation request access to documents, they should be provided with copies or viewed under supervision.

The investigator should remain objective and avoid leading the witness through inappropriate feedback or comment. At the end of the interview, the witness should be asked if there is anything else that they wish to add

to the evidence that they have given. Following the interview witnesses should be given a comprehensive note and asked to confirm that it is an accurate record of their interview.

There is no need for witnesses to be accompanied. If a witness requests a friend or supporter to be present, the investigators may allow this but the friend should take no part in the interview and should not answer questions or make statements on the witness's behalf. Accurate records should be kept of all interviews.

If at decision stage it has been agreed that it is appropriate for the employee to know that the investigation is taking place, the employee should be invited to an investigation interview to provide a response to the complaint/allegations and any information thought relevant to the matters under investigation. This might include documentary evidence as well as identifying witnesses, and providing oral evidence. The investigator(s) should take account of any evidence provided by the employee which is consistent with the investigation's terms of reference. It may be appropriate for the employee to be interviewed twice, at the start of the investigation and at the end when all other evidence has been collected. The first interview gives the employee an opportunity to co-operate and comment on the investigation process while the second allows the employee to be questioned about information likely to be used in the investigation report.

Prior to being interviewed the employee might request sight of the evidence on which the investigator(s) propose to rely in their report. This would normally be permitted, once the evidence has been collated into its final form at the outcome meeting with the Case Manager. Prior to a decision being made.

**Managing and Reporting the Facts** - Having collected the evidence, the investigator(s) should set out the facts as they see them, weighing the evidence on the balance of probabilities and taking as true anything which appears more probable than improbable. The more serious the concerns about the employee, the greater the need for the investigators to satisfy themselves that the evidence supports their findings of fact.

Investigators will need to take positions on:

- **Written versus oral evidence:** While written evidence may be more clearly defined, oral evidence can be tested by questioning and could be taken as equally reliable, depending on the circumstances. Written witness statements are best compiled in the words of the witness and signed and dated. Both forms of evidence are best collected as soon as possible after the events in question.
- **Age of evidence:** Apart from determining what is meant by 'old' in local proceedings, it might be considered that a pattern of unacceptable performance (including conduct) over a period of time is likely to be more significant evidence than an isolated incident even if occurring recently
- **Seeing the event itself or seeing the aftermath:** Factual evidence ought to carry most weight. Opinions of witnesses and unsupported anecdotal evidence are likely to have limited use.
- **Technical competence:** Where the investigator identifies a need for specialist advice to interpret a technical issue outside their expertise, the case manager should make arrangements for it to be provided so that evidence is appropriately interpreted.
- **Evidence from previous investigations:** All relevant evidence should be considered, including previous complaints and investigations where relevant, provided there are adequate records of the events and actions that were taken at that time or matters were of a serious nature such that they continue to have a relevance to the matters now under investigation and can usefully form part of the investigators report.

Some conflicts of evidence are probably inevitable as individuals present different accounts of the same events. Not all conflicts of evidence need to be resolved, only those that affect the investigators' findings of fact about the performance concerns being investigated.

Normally, independent accounts which corroborate each other are likely to be preferred to disparate accounts of the same incident, or similar accounts provided by people known to be antipathetic to the employee under investigation. In drafting their report, investigators should record material conflicts of evidence stating which version of events they preferred and why.

**Manage the investigation timetable** MHPS states that the case investigator should aim to complete the investigation within four weeks of appointment and submit a report to the case manager within a further five days. In more complex cases it may not be possible to do this. But it is good practice to try to complete investigations within a reasonable timescale taking into account the circumstances of the individual case. Delays are damaging to our organisation, the employee and to other staff and patients. The investigation process can lose momentum and become stale. **Active management of the process by the case manager is essential if delays are to be avoided.**

The report should be presented in the required format as seen in appendix 6 and reviewed with the Case Manager once the investigation has been concluded. If a decision is made by the decision maker in consultation with the case manager to progress the case to a hearing or professional regulatory body, the Case Investigator will be required to attend as a witness to present the facts.

## **EMPLOYEE SUBJECT TO FORMAL INVESTIGATION**

The employee who is subject to an investigation will be informed of the decision to investigate together with any action that may be decided in the interests of employee and patient safety in a letter from the Case Manager. The letter will invite the employee to a meeting with the case manager and will include a statement of complaint/allegations and agreed terms of reference.

The meeting will aim to explain and allow questions about:

- Terms of reference, timescale, names of case manager(s) and investigator(s) and the process which the employee can use to respond to the concerns raised;
- The regulations and local procedures governing the case's handling. In England, for example, MHPS contains detailed guidance on investigation procedures where a mentor and designated board member is assigned
- The reasons for any restrictions on practice or suspension/exclusion with explanation of the potential consequences if requirements are not complied with if this decision has been made.
- Any proposed statements to patients, colleagues or the media, with the employee given enough time to discuss them with advisers/representatives. Ordinarily, colleagues would not have a direct need to know why the employee is under investigation or why they have been suspended or excluded from work. But some limited release of information may be appropriate and it is better if this is agreed with the employee, where possible particularly where cases have media interest;
- The need for the employee not to attempt to influence potential witnesses – the same instruction going to everyone else involved in the investigation;
- The need for co-operation throughout the investigation process, compliance to contractual and professional standards.
- Personal support mechanisms.

Being the subject of an investigation is likely to be very stressful for the employee. Support mechanisms could include access to occupational health services and the employee assistance programme. Employees are urged to seek support from their Managers in referring to occupational health for advice on fitness to work or related questions about their health. When making a referral to an occupational health physician, it is important that the employee provides sufficient information to be explicit about the health issues which are causing concern. Use of their GP or other routes will not prevent the occupational health physician giving advice on fitness for work, if necessary, where a manager has sought a referral in the first place.

The *Employment Relations Act 1999* gives employees the right to be accompanied by a union/professional body representative or by a work colleague. While that person might speak on behalf of the employee, the employee must answer any specific questions put to them about their own actions. In England, where MHPS has been adopted, employed doctors have an additional right to a legally qualified representative.

Failure for an employee not to attend an interview or cooperate may in itself warrant further action. Not answering questions denies the employee the opportunity to ensure that their own account of events is properly

presented to the investigators. Professional regulators expect medical staff to cooperate and contribute to local inquiries to help reduce risk to patients, so regulator referral may be an option for the organisation where non-cooperation arises.

There is a contractual requirement for all medical staff to be familiar with the GMC Good Medical Practice, MHPS, and Trust Policies as published on the Trusts intranet and to co-operate with the investigation process in accordance with the standards as detailed by the GMC.

## **DECIDING/INFORMING THE OUTCOME OF AN INVESTIGATION**

At the conclusion of the investigation it is for the decision maker in consultation with the Case Manager to determine what further action, if any, is required. There are many potential options, ranging from taking no further action or arranging local counselling and mentoring, to referral to the regulator, or local disciplinary or capability procedures.

Once that decision has been reached it is the responsibility of the case manager to arrange an outcome meeting with the employee to explain and provide a statement of the outcome of the investigation.

The Case Manager is responsible for following up on any recommendations found within the investigation report which identify a review of policies, processes and procedures, and will act as mentor where the employee may require developmental support. The Case Manager will produce a statement which follows up on these recommendations to the Medical Director and relevant Divisional Director, Head of Department for revalidation records.

## **THE HEARING CHAIRMAN RESPONSIBILITIES**

If the decision maker in consultation with the case manager decides that there is a prima facie case found within the investigation report the employee will be informed of this decision at the outcome meeting arranged by the Case Manager or Lead Employer for trainees. Once an investigation outcome has been provided the Case Manager can no longer provide the employee with information about the case.

The employee will receive communications about the hearing from the Hearing Chairman through the Medical HR Secretary to the panel.

**The Hearing Chairman-** The Hearing Chairman is the manager who hears a case at a disciplinary hearing, they have no prior knowledge of the case and are impartial. They need to have the relevant level of authority to issue disciplinary warnings/penalties or dismiss an employee. A Medical HR representative, not previously involved in the investigation will provide support to the chairman and panel.

The Hearing Chairman is not legally trained and will seek advice from the Trusts legal advisors where cases are legally challenged. If the Trust agrees to legal representation in the cases heard through MHPS, it is most likely that a decision would be deferred before reaching a decision.

The Hearing Chairman is responsible for the following during the course of a hearing: -

- 1) To write to the employee concerned notifying them of the disciplinary hearing (standard letter available from HR), including submitting a copy of the investigation report. The employee needs at least 7 calendar days notice of the hearing. To ensure they are notified of the right to be represented by a work colleague or trade union representative.
- 2) To provide the employee with the opportunity to submit a written case in advance of the hearing and respond to any questions they may have in relation to the information being presented or procedure.



- 3) To determine if an additional panel member or expert is required and make arrangements if necessary.
- 4) To read the case prior to the hearing and prepare any necessary questions.
- 5) To ensure administration support is provided at the hearing to take formal minutes (usually the relevant PA).
- 6) To chair the hearing in accordance with the Disciplinary Procedure. The format followed is: -
  - Introductions and purpose of the hearing
  - Statement of Management Case: Case Manager to introduce the Case, calling the Investigating Officer to present the facts and call witnesses
  - Employee to ask questions resulting from management case and witnesses
  - Hearing Chairman/panel to ask Management and witnesses any questions
  - Employee to respond to management case and call witnesses
  - Case Manager to ask employee questions
  - Hearing Chairman/panel to ask employee questions
  - Summing up to be provided by both parties.
  - Adjournment for decision to be made.
  - Outcome Decision to be delivered or decision to adjourn to a later time/day. **(where the information is conflicting or complex information at the hearing, an outcome decision may be deferred and an adjournment made to consider the complexities of the evidence.)**
- 7) To be responsible for making a decision regarding the disciplinary sanction taking into account employment law, professional standards, trust reputation, contractual and policy requirements advice, any mitigation presented, previous warnings and balance of probabilities.
- 8) Write to the employee providing a written outcome of the meeting. A letter will be sent confirming the details of the outcome of this meeting within 10 calendar days.
- 9) Inform employee of their right to appeal the Chairs decision, which should be made in writing to the Director of Human Resources within 14 days of receipt of the outcome letter.
- 10) If the employee appeals, it will be expected the Hearing Chairman prepares a case in detailing the reasons for their decision and presents at the appeal hearing.

Please Note: Practical examples of the Terms of Reference and Investigation Reports can be requested from Nicola Di-Vito

Anyone interested in training available to become an Accredited Investigator should contact Nicola Di-Vito

Contact Details: Nicola Di-Vito  
 Deputy Medical Workforce Manager  
 Phase 5  
 Medical Workforce Offices  
 Blackpool Victoria Hospital  
 Tel: 01253 957256  
 Email: nicola.di-vito@bfwh.nhs.uk

**Appendix 1:** Form signed by decision maker to initiate a formal investigation and authority to progress suspension/exclusion

<b>Name (DM)</b>		<b>Department</b>	
<b>Job Title</b>		<b>Date</b>	
<b>Information sources eg complaint, SI, with dates</b>		<b>List Allegations to be considered – policy</b>	
<b>Name employee</b>		<b>Department</b>	
<b>Job Title</b>		<b>Response obtained (if not appropriate state reasons eg fraud/police)</b>	
<b>Formal Investigation Y/N</b>	Print Name Y / N	<b>Signed</b>	
<b>Potential risks identified to:</b>	Patients  Services  Trust reputation  Professional standards  Investigation process	<b>Decision to redeploy/restriction to duties (state)</b>	
<b>Decision to exclude/suspend date escalated (state if out of hours exec director)</b>		<b>Authority to exclude/Suspend Date</b>	Print Name  Date:  Signed:
<b>Case Manager Assigned</b>	Name:  Job Title  Date	<b>Terms of Reference (TOR) approved</b>	TOR Date  Employee Notification Date
<b>Date Investigation completed / reviewed</b>	Date:  Employee Outcome Meeting Date	<b>Outcome Decision</b>	

## Appendix 2

### **TERMS OF REFERENCE**

Drafted by the Case Manager and approved by the decision maker in order to commission an investigator.

#### **EXAMPLE TERMS OF REFERENCE**

**INTRODUCTION** detail to the background of the complaint/allegation.

How, by who/what and when the concern was highlighted, reports provided including statements complaint letters audit reports:

The preliminary information examined by the decision maker to consider the specific allegations and early statements responses, facts, examination of documents and records such as incident reports, (documentation available at this stage to be enclosed as appendices within TOR.

Who made the decision to investigate, preliminary concerns included:

**SUMMARY OF ALLEGATION/COMPLAINT/INCIDENT**– what it involved, when it happened and who was witness. What were the concerns that triggered the investigation.

On xx date was assigned as the Case Manager Name, Job Title, details of the role of the Case Manager is outlined in the TRUST Investigation Guidance. The following Terms of Reference have been approved by xxx, the decision maker on xx date.

**EMPLOYEE DETAILS**, who the complaint allegation has been raised against, Name, Job Title, Job Description

- 1) The allegations and potential breaches to relevant policies and or professional standards
- 2) The specific questions and issues that require investigation (these also need to be in conjunction with the allegations against the employee)
- 3) An investigation schedule with and planned investigation completion date to include:
  - a. Interviews scheduled names, dates
  - b. A list of documents that might need to be sought. site visits, photographic/diagrams.
  - c. Expert opinion if required
- 4) Details of the relevant policies and procedures
- 5) A date for the investigation to be completed by.

Details of Case Investigator commissioned to undertake this investigation, Name, Job Title, contact details. HR Advisor supporting this process.

As the investigation progresses and further facts unfold the terms of reference may be found to be too narrow or new issues emerge that may warrant further investigation. In such cases, the investigator(s) should inform and review the information with the case manager who should seek the agreement of the decision maker to a widening of the terms. Such requests should be escalated and decided on promptly so that the investigation is not delayed. The employee must be informed of any changes to the terms of reference unless, exceptionally, they are kept unaware of the investigation at all.

### Appendix 3

Case Managers Letter to Employee notifying a formal investigation (restriction/exclusion if agreed) allegations, terms of reference, details of the Investigating Officer

Dear Dr Employee

I am writing to inform you that following a [report / complaint / SI] that occurred on DATE. At this stage allegations have been raised involving patient / reputation / serious breach to policies and or professional standards.

Due to the seriousness of the allegations, [NAME, Medical Director] has reviewed the following information and decided to progress a formal investigation [a referral has been made to NCAS advising of this decision]:

**List information available and allegations at this stage**

I have been assigned as the Case Manager, for this case. I have enclosed a copy of the TRUST Investigation Guidance to provide you with an overview my role and the role of others involved in this process. It has been necessary to appoint an [external] investigating officer to review all aspects of this case. [The Trust also has to consider its duty to protect patient safety and as a result it will be necessary to [place temporary restrictions on your practice/ redeploy/ exclude or suspend] until the conclusion of the investigation and with immediate effect.

The formal investigation will be undertaken to establish whether or not there is a case of capability or misconduct in relation to your involvement in these allegations. The formal investigation will be conducted in line with the Trust's 'Disciplinary Policy' [and MHPS for doctors]. This policy can be found on the intranet under HR policies. "Unfounded and malicious allegations can cause lasting damage to an employees reputation and career prospects". Therefore all allegations, including those made by relatives of patients, or concerns raised by colleagues, must be properly investigated to verify the facts so that the allegations can be shown to be true or false."

The investigation will be carried out by NAME, JOB TITLE an [external] investigating officer, who will be writing to you independently. The investigator will be responsible for leading the investigation and establishing the facts to meet the agreed terms of reference, establishing the facts and presenting a report of findings. **(Please note the name and contact details of the investigator will be advised with the next 5 working days)**

The investigation aims to ascertain the facts in an unbiased manner, and to produce a report of findings against the approved terms of reference TOR (include these if approved at the time of issuing this letter) which will be provided to you by the Investigating Officer.

The report of the investigation will then be presented to the case manager with sufficient information to make a decision whether:

- There is a case of misconduct that should be put to a conduct hearing panel;
- There are concerns about your health for referral to TRUST's occupational health service;
- There are concerns about your performance that should be further explored
- Restrictions on practice or exclusion from work may be considered;
- There are serious concerns that should be referred to the NMC, GMC or GDC;

- There are intractable problems and the matter should be put before a capability panel;
- There is no case to answer no further action is needed.

At any stage of this process you have the right to be accompanied in any interview or hearing by a companion. The case investigator will complete the investigation within 4 weeks of appointment and submit their report to myself the Case Manager for a decision within a further 5 days. You will then be invited to an outcome meeting where you may review a copy of the completed report and findings.

Non-Exec Director is the designated Board member for this case. Name, Job Title is available to provide individual mentor support throughout this process.

Yours sincerely

Name

Job Title (Case Manager)

Cc

Decision Maker

Case Investigator

HR Advisor

## Appendix 6 - Format of Investigation Report

**The investigation report** - The key document is the investigator's report. This should be a self-contained document with enough information within it to inform a subsequent decision on whether concerns are unfounded or confirmed, whether or not further action is needed and, if so, the type of action to be taken.

Wherever possible the report should exclude reference to identifiable individuals other than the employee. A suggested structure for an investigation report is shown below. It shows how evidence can be set out in order to be as clear as possible and inform the decision-making process effectively.

### Front cover

TRUST HEADER

Strictly confidential

Report of investigation into concerns raised STATE ALLEGATIONS in relation to [employee's name, job title, site of employment]

Case reference number

Date

**Contents page** - Chapter headings with page numbers. Headings might include: Introduction, Background, The investigation, Methods, Findings of fact, Summary of conclusions.

The report can refer to annexes as necessary. Each document referred to should have a unique identifier. Where there are many documents it is helpful to categorise them by type - witness statement, clinical record, summary of witness interview, etc. The system will follow from the filing system set up at the start of the investigation.

**Report** - The report needs to set out the case story. The sections which will be appropriate will depend on the nature of each case but the following elements will normally need to be included somewhere:

- **Introduction**– brief introduction to the investigation, its relationship with any investigations by other bodies and the procedures and regulations governing the present investigation.
- **Background** – relevant career information about the employee and work with the organisation, reasons for the investigation in more detail.
- **The investigation** – the specific allegations for investigation, the team carrying out the investigation (with names, job titles and qualifications), the terms of reference as set initially plus any subsequent amendments.
- **Methods**– for example, review of patient records, audit of a specific set of cases, prescribing reviews, interviews with specified patients and/or colleagues. If any expert witnesses were used, their expert credentials should be reported. There should be a list of all people interviewed and the capacity in which they were involved in the investigation.
- **Findings of fact** – what has happened, set out in chronological order and with supporting evidence identified. Where the findings of fact include the opinion of case investigators or other experts on a standard of care, the required standards of care should be quoted. The findings should draw attention to any conflicts of evidence and whether it was necessary to resolve the conflicts in order to complete the investigation. Grounds should be given for preferring one version of events to another.
- **Conclusions** – the conclusion reached on each of the points listed in the terms of reference, cross-referenced to the findings of fact.

Signed [Investigator(s)].....Date

Appendix 7 - Invitation to an Outcome Meeting – where a decision has been made to refer to a panel

Dear Employee

Thank you for attending the outcome meeting held on date, with NAME your representative and NAME HR where I informed you of the investigation findings into the allegations raised against you.

SUMMARY OF FINDINGS/CONCLUSION

TERMS OF REFERENCE

1.	State allegation as outlined in TOR
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Findings: What facts have been presented to provide a finding against this allegation.  
Was this found to be true or not based on fact or probability

2.	State allegation as outlined in TOR
----	-------------------------------------

Findings: What facts have been presented to provide a finding against this allegation.  
Was this found to be true or not based on fact or probability

3.	
----	--

Findings: What facts have been presented to provide a finding against this allegation.  
Was this found to be true or not based on fact or probability

The Case Manager supports the investigation conclusion which has found that you have breached **the following professional standards, and in breaching this professional code you** have breached the Trusts disciplinary rules your case has been referred to a conduct hearing in accordance with the trusts Disciplinary Policy.

A disciplinary panel will now consider your case, at this time you will be able to present your response to the findings and call any witnesses.

It is imperative that confidentiality is maintained on this matter, you are therefore advised not to discuss this with anyone other than your representative.

## Appendix 8 - Invitation to a hearing letter from Chair

Dear Employee

### **Re: Disciplinary Hearing – DATE**

Further to your outcome meeting with NAME, Case Manager, I am writing to confirm that the investigation is complete and it has been decided that the findings are of such a serious nature they will be considered at a formal Disciplinary Hearing, in accordance with the Trust's Disciplinary Policy.

The investigation findings against you are as follows:

#### LIST OF FINDINGS PRESENTED AT THE OUTCOME MEETING

I have arranged the following to hear this case:

Date:

Time:

Venue:

I will chair the hearing, supported by NAME [and NAME, Consultant JOB TITLE as external representative MHPS] and NAME, HR, who will be present to provide professional advice on policy, procedure and employment law matters.

NAME, the Case Manager, and NAME the Case Investigator will be presenting the management statement of case, supported by NAME HR Advisor. You are entitled to be accompanied by an accredited representative or a fellow Trust employee and to put forward evidence in mitigation. Your representation is for you to arrange. Representation does not extend to legal representation.

I have enclosed the management statement of case, which comprises of the report of the investigation and other relevant documentation relating to the hearing. If you have any documentation, which you wish to refer to at the Disciplinary Hearing, this must reach me no later than DATE, documents submitted after this date without any reasonable explanation may not be considered.

Management intend to call the following witnesses:

List Names and job titles.....

If you intend to call any witnesses to support your case, you must give me their names no later than DATE.

You will have the opportunity to respond to the case in full and may refer to your original claims during the hearing. You may be asked questions regarding your claims or any further questions deemed necessary. I must inform you that, if the allegations against you are substantiated, the following penalties may apply – Verbal warning, First written warning, Final Written warning or Dismissal.



Please confirm your attendance by Email [HR](#) representative supporting the panel with details should you require any reasonable adjustments to be made. Please note should you fail to attend on this date without any reasonable explanation the panel may progress hearing this case in your absence.

Yours sincerely

NAME

JOB TITLE, Hearing Chairman

Cc: HR Advisor to the panel  
Name Panel representative(s)  
Name, Case Manager  
Name, Case Investigator  
Name, representative

Enc:

Management Statement of case and appendices  
Disciplinary Policy