

Investigation Guide for Managers

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Consultation / Acknowledgements with Stakeholders		
Name	Designation Date R	
HR Policy Forum		

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1 Introduction / Purpose

The Trust is committed to ensure a fair, consistent and effective approach in dealing with employee investigations, in accordance with Just Culture. This process is designed to ensure a full and thorough investigation is conducted to allow appropriate management decisions to be made.

Just Culture encourages a culture of fairness, openness and learning where staff feel confident to speak up when things go wrong rather than fearing blame.

This guidance should be used in conjunction with advice from your Human Resources Representative. It may be necessary to seek legal, audit and other specialist advice at the outset of particular types of investigations. It will be important to establish the type of investigation and which policy it relates to in order to ensure that appropriate procedures are followed.

This guideline provides general advice to anyone appointed to investigate:

- a) disciplinary allegations;
- b) grievances;
- c) allegations of bullying and harassment;
- d) allegations raised under Protected Disclosure (whistleblowing);
- e) allegations of fraud.

This document must be read in conjunction with the appropriate policy and/or procedures which will clarify any specific procedural requirements. Those requirements will include timescales for the investigation. This guideline does not amend, alter or negate any of the agreed employment policies and procedures in any way. The application of the relevant employment policies and procedures will be supplemented by skills training.

2 General Principles / Target Audience

This Guideline will apply to all staff employed by Blackpool Teaching Hospitals NHS Foundation Trust. In cases involving medical staff this guideline must be read in conjunction with the Handling Concerns Procedure for Medical and Dental Staff (1).

3 Definitions and Abbreviations

- CCTV Closed Circuit Television
- HR Human Resources
- IUC Interview Under Caution
- JNCC Joint Negotiating Consultative Committee
- LCFS Local Counter Fraud Specialist
- MSOC Management Statement of Case
- OD Organisational Development
- Trade Union Representative

A representative of a recognised negotiating body of the Trust.

TOR Terms of Reference

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WAS Workforce Advisory Service – the team responsible for managing Employee Relations cases on behalf of the Trust

4 Guideline

The purpose of the investigation is threefold:

- To determine whether or not there is a case to answer
- To be thorough, fair and objective, respecting the rights of all the involved parties
- To collect relevant evidence and to establish facts, to be used in preparation for action in the event that formal procedures need to take place.
- If there is any possibility of fraud, bribery or corruption the Local Counter Fraud Specialist (LCFS) should be consulted and, if appropriate, the Director of Finance will authorise subsequent involvement from the LCFS. Those investigations will be conducted in accordance with the NHS Counter Fraud and Corruption Manual and the Trust's Fraud, Bribery and Corruption Policy (2).
- In the case of criminal investigation, the Head of HR will liaise with the Local Counter Fraud Specialist (LCFS) to decide whether it is appropriate to delay the Trust investigation. Cases involving the LCFS will be investigated in parallel with any internal investigation. The criminal case will usually take priority in cases where a formal Interview Under Caution (IUC) is required. Once the formal IUC has taken place the internal investigation can continue. Both investigations will then be concluded in accordance with appropriate polices and working practices.

4.1 The Investigation Process

4.1.1 Commissioning an Investigation

Prior to commissioning an investigation, advice must be sought from the Workforce Advisory Service. The Commissioning Manager must have enough information to be assured that a formal investigation is appropriate, this may include the 4W's Informal Fact finding <u>4-Ws-Employee-Relations-Process.pdf (bfwh.nhs.uk)</u> documentation and written statements from those involved (Appendix 1).

At the start of the investigation, the Commissioning Manager will specify the Terms of Reference (TOR) and provide this to the Investigating Manager, along with any relevant documentation already. The Commissioning Manager will appoint a suitable Investigating Manager based on the following:

- The independence of the investigator/s;
- Credibility of the investigator/s;
- Specialist knowledge required;
- Sensitivity of the situation;
- Time available to undertake the investigation;
- The necessary skills, training and experience of investigator/s

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4.1.2 The Investigation

In the case of disciplinary investigations, the Terms of Reference should be prepared and should be shared with the alleged perpetrator prior to the investigation meeting.

In the case of non-disciplinary investigations, it may not be possible to define terms of reference until after the initial meeting with the complainant. In those cases, the terms of reference should be clarified in the meeting and sent to the complainant no later than 7 calendar days after the meeting.

Terms of reference should include:

- Details of the allegations to be investigated
- The proposed timescales for the investigation
- Under which policy the investigation is being conducted
- The purpose of the report
- Who will receive copies of the final report

As part of any investigation process, the individual concerned must be informed in writing that an investigation has been instigated. In cases of criminal investigation, consideration must be given to the timing of informing the individual concerned, thereby safeguarding the collating of potential information/evidence. Any delay must be fully justified.

Where interviews result in the widening of an investigation or where timescales need to be increased the Terms of Reference must be revised and the employee provided with a copy.

It is important to understand the Trust obligations in regard to a Protected Disclosure (Whistleblowing) (3) and this must be discussed with a senior member of the Workforce Advisory Service prior to the commencement of any investigation.

The Investigating Manager will undertake a detailed and thorough investigation by gathering all the relevant evidence. This is usually through formal interviews and a review of documentation. The Investigating Manager will determine who they need to interview and what evidence they need to gather in consultation with their HR Support.

4.1.2.1 Interviews

For the interview process to be successful, it must be consistent, fair and objective. The investigating manager will approach the investigation with an open mind. This can be achieved by following the below guidance:-

- The process must be aligned to clear criteria and/or terms of reference
- Where the matter is a complaint, the complainant should normally be interviewed first followed by the alleged perpetrator.

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- Where there is no complainant, the alleged perpetrator would normally be interviewed first.
- During the initial interviews the individuals should also be asked if they have any witnesses whom they wish to be interviewed. It may also be necessary to collect some background information before these interviews take place. It will be for the investigating manager to determine the relevance of those witnesses and ultimately their inclusion in the investigation. Where a decision is made not to interview identified witnesses this must be included in the final investigation report and an explanation included in any outcome letter.
- All employees who are directly involved or are witnesses or possess information that is beneficial to the investigation process, are expected to co-operate fully with all investigations and be open and honest in regards to information they provide. Under the registration of the relevant bodies, registrants have a duty to cooperate with any investigation process.
- Witnesses must be advised that should the case proceed to the next stage of the relevant policy that they may be called to give evidence.

4.1.3 Interview process

- Introduce everyone, outline the purpose of the interview, the investigation and the process which will be followed
- The Investigating Manager should try to put all individuals at ease
- All individuals have the right to be accompanied by either a Trade Union Representative or a Work Colleague
- Explain what will happen with the notes of the meeting and timescales
- Explain the decision-making process and that the role of the Investigating Manager is to ascertain the facts and to draw conclusions
- Discuss confidentiality and stress its importance and any consequences of breaches.
- **Do not** make comments regarding findings to date and remain impartial
- Concentrate on specifics, e.g., events, times, dates what was seen and heard
- The extent of the investigation should be proportionate to the seriousness of the issue
- Individuals should be available for meetings and not unreasonably delay the investigation. Written testimonials or telephone meetings can be accepted where availability is limited and/or where difficulty is encountered in arranging timely meetings. Where an employee does not cooperate, they must be informed that the investigation will conclude with the information available, if necessary
- Reluctant witnesses should be told that the interview will be held privately, that notes
 of the meeting will be taken which they will be able to verify for accuracy and must be
 reminded of their obligation to the Standards of Business Conduct Policy (4) and their
 professional body obligations.

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- Where a member of staff is absent from work through sickness, Occupational Health will be consulted. An investigation should not be delayed on the grounds of absence, nor should it compromise an individual's health. Whilst the investigator will be sympathetic to an individual's condition the investigation will continue
- If an individual claims the allegations are vexatious, explain that the allegations at hand must be investigated initially and should there be evidence of malice, this will be investigated separately.

NOTE: - In cases of criminal and disciplinary investigations being conducted, where it is appropriate "information gathering" interviews can be conducted by both the LCFS and the Investigating Manager or Workforce Advisory Service representative, to avoid repetition where possible.

4.2 Note Taking

Verbatim notes do not need to be taken, but the key points of any answers should be noted. There may be repetition, but it is still important to record these responses. A member of staff from the HR Team will take these notes.

4.3 Additional Evidence

Other relevant information that may need to be accessed could include:

- Trust financial records. If there are any doubts around this issue then audit should always be consulted.
- Occupational Health documents (subject to the requirements of the Access to Medical Records Act (5) and the Data Protection Act 2018 (6; 7))
- Minutes of meetings
- Appraisals, training records
- Details of any performance management documents
- Evidence from clients / patients, it may be appropriate to involve another professional in some incidents with sufficient expertise to communicate with, elicit and evaluate this type of evidence
- Documentary evidence in relation to the investigation, which could include policies, procedures, emails, log books etc.
- Closed Circuit Television (CCTV) evidence

When collecting additional information Investigating Managers should be mindful of the Data Protection Act 2018 (6; 7), which implemented the General Data Protection Regulation (GDPR), the Telecommunications Regulations 2000 and advice should be sought from the relevant specialists in these areas if necessary.

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4.4 Evaluation of Data and Conclusion of the Investigation

Having gathered all the facts, the investigating manager needs to reach a conclusion and will prepare a summary report of their findings and discuss this with the Senior Manager who authorised the investigation. The Senior Manager will use this report to decide the next course of action in regard to the following: .

- No case to answer
- No case to answer but recommendations made
- A case to answer that should be dealt with informally and may/may not include additional recommendations
- A case to answer that should be dealt with formally

Recommendations could include guidance for individuals including managers, training, or other appropriate action.

All parties involved, excluding witnesses, need to be informed of the decision in writing.

Where the case is proceeding to a formal hearing, the investigation report including all supporting documentation will be issued to the individual with an invite letter to the Disciplinary Hearing.

5 References and Associated Documents

1. **BTHFT - Procedure.** Handling Conccerns Procedure for Medical and Dental Staff. [Online] 22 11 2022. [Cited: 31 05 2023.]

http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-PROC-451.docx. CORP/PROC/451.

2. **BTHFT - Policy.** Fraud, Bribery and Corruption Policy. [Online] 26 04 2021. [Cited: 31 05 2023.] http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-136.pdf. CORP/POL/136.

3. —. Freedom to speak up: raising concerns (whistleblowing) policy. [Online] 11 05 2020. [Cited: 31 05 2023.] http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-214.docx. CORP/POL/214.

4. —. Standards of Business Conduct. [Online] 09 12 2020. [Cited: 31 05 2023.] http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-358.pdf. CORP/POL/358.

5. **Crown.** Access to Medical Reports Act 1988. [Online] 1988. [Cited: 31 05 2023.] https://www.legislation.gov.uk/ukpga/1988/28/contents.

6. —. Data Protection Act 2018. [Online] 2018. [Cited: 31 05 2023.] https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted.

7. **BTHFT - Policy.** Data Protection. [Online] 13 06 2022. [Cited: 17 04 2023.] http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-064.docx. CORP/POL/064.

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8. —. Performance Improvement. [Online] 03 07 2020. [Cited: 31 05 2023.] http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-517.docx. CORP/POL/517.

9. **BTHFT - Procedure.** Disciplinary and appeal Procedure. [Online] 19 05 2021. [Cited: 31 05 2023.] http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-PROC-636.docx. CORP/PROC/636.

10. **Crown.** The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000. [Online] 2000. [Cited: 31 05 2023.] https://www.legislation.gov.uk/uksi/2000/2699/contents/made.

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Appendix 1: 4W's Employee Relations Process

What

Who

Why

Way Ahead

A Just Culture looks first at **what** was responsible for an issue or situation before looking at who was responsible. The actions of individuals need to be placed into context early, not at the end which often happens.

The purpose of any disciplinary process is to correct behaviour; to prevent that behaviour from reoccurring. However, we often only begin rebuilding or repairing relationships and situations at the end of the investigation from recommendations or the imposition of a sanction. By adopting a Just Culture approach to employee relations matters we will make our investigation process **constructive** rather than *destructive*.

Whilst all investigations will ultimately ask the question why, it is essential that early intervention looks at what happened, who was hurt or harmed, why did this happen and what is the immediate way ahead to begin repairing and **ensuring it doesn't happen again**.

Line Managers are crucial in this role, along with HR and Staff Side partners supporting the process. Employees need to take responsibility and be accountable for their actions, however, so does the organisation. To do this, individuals and their actions need to be placed *into* context via **immediate** fact finding **before** any **formal investigation** is considered.

Line Mangers need to establish:

- What has happened?
- Who was hurt or harmed?
- Why did it happen?
- What is the immediate Way Ahead?

Fact Finding:

What has happened and Who (or what) was hurt or harmed

- Summary of what happened
- Statement from the member/s of staff involved
- Statement from witnesses

Why did it happen?

- Has there been a **System** failure was the policy or procedure not adequate or not followed if not why not?
- Is there a lack of **resources** was equipment or staffing correct and available?

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- Do the individuals involved have the **Knowledge**, skills or awareness did they know what to do, are there training issues?
- Mitigation are there any personal factors that have contributed?

What is the Way Ahead

- Is there any immediate action or intervention that could be done to stop a repeat or to repair a relationship quickly?
- Is an immediate referral for support required, for example to Occupational Health?
- Should a restriction be put in place immediately so that training or a repair could be completed?

Fact finding is not part of the formal process and will simply be a conversation between the line manager and the employees involved as soon as possible. The employee can either submit a summary to support what is being said or the manager will make a brief note of the discussion which will be signed and dated by the employee.

Once fact finding is complete and immediate action taken the line manager may determine no further action is required. In that case the line manager will summarise the events and the outcome in a letter to the employee, placing a copy, along with the fact finding documentation, on the personal file.

If the line manager believes that matter requires further action, or is unsure, then contact should be made with the Workforce Advisory Service requesting support and guidance. Copies of all fact finding documentation should be provided and an appropriate member of the Workforce Advisory Service will make early contact with the line manager to discuss and agree the following:

- Is a formal investigation required?
- Who has approved this?
- Who will investigate?
- Could fast track be an option?

Where it is determined that a formal investigation is necessary this will commence as soon as possible, with the appointing manager confirming that the investigation manager has the necessary time and ability to fulfil this role. Investigations should be commenced and completed within the minimum timeframes possible. HR and Staff Side will be as flexible in supporting efficient investigations thereby further minimising the impact of the individuals involved.

Where a suspension is considered appropriate this can only be authorised by 2 people, one of them whom will be an Executive Director or their nominated Deputy. Where an employee is suspended this will always be for the minimum period necessary.

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Appendix 2: Equality							
Department Organisatio	n Wide	Wide Service or Policy Guide Date Complete		ted: April 2023			
GROUPS TO BE CONSIDERED		·			den neenle oblidae		
Deprived communities, homeless, su young people, Lesbian Gay Bi-sexua	Ibstance m	isusers, people who h	ave a disability,	learning disability, of	der people, childre	n and families,	
	li or Transo	gender, minority ethnic	communities, G	sypsy/Roma/Travelle	rs, women/men, pa	irents, carers, star	
wider community, offenders.			-				
EQUALITY PROTECTED CHARAC							
Age, gender, disability, race, sexual	orientation	, gender identity (or re	assignment), reli	gion and belief, care	rs, Human Rights a	and social	
economic / deprivation.							
QUESTION			SPONSE			PACT	
		Issue		Action	Positive	Negative	
What is the service, leaflet or policy		cedural Document is to e		wareness of the	This policy	No negative	
development?	that all members of staff have clear			sations format and	promotes a positive		
What are its aims, who are the target		guidance on processes to be followed.		ses involved in	and inclusive	at this time.	
audience?		et audience is all staff ac		to the procedural	approach to		
	the Organisation who undertakes this		this docume	ent.	supporting our employees		
Does the service, leaflet or policy/	process.	no identified impact on		N/A	N/A	N/A	
development impact on community		ity safety/crime or comm	unity	IN/A	IN/A	IN/A	
safety	cohesior		unity				
● Crime	00/100/01						
Community cohesion							
Is there any evidence that groups who	Currently	there is no evidence that	at	N/A	This policy	No negative	
should benefit do not? i.e. equal		ho should benefit does n			promotes a positive		
opportunity monitoring of service users					and inclusive	at this time.	
and/or staff. If none/insufficient local or					approach to	-	
national data available consider what					supporting our		
information you need.					employees as well		
					as raising		
					awareness of		
					legalisation		
Deep the population landet an	N	the impact has been the	atified bits of	on romined at the	entitlements.	A Nonearthur	
Does the service, leaflet or		tive impact has been ide		on required at this	No impact identified	No negative impact identifie	
development/ policy have a negative	in relation to any geographical or sub group of the population.		ut future reviews ee a change which	at this time but might change at a	at this time.		
impact on any geographical or sub group of the population?	group or			s action.	future review.	at this time.	
How does the service, leaflet or policy/	Ensures	a cohesive approach aci		ties and procedural	This policy	No negative	
development promote equality and		nisation in relation to the		ents include an EIA	promotes a positive		
diversity?		al document.		ify any positive or	and inclusive	at this time.	
	P			e impacts.	approach to		
			0		supporting our		
					employees		
Does the service, leaflet or policy/		cedure includes a comple	eted No action	on required at this	This policy	No negative	
development explicitly include a		n provides the opportunit		ut future reviews	promotes a positive		
commitment to equality and diversity		any potential for a negat		ee a change which	and inclusive	at this time.	
and meeting needs? How does it	adverse	impact.	requires	s action.	approach to	1	
demonstrate its impact?					supporting our		
Deep the Organization and the	The Tree	t is reflective of the comm		inua manitarira ataff	employees	Noncestive	
Does the Organisation or service workforce reflect the local population?		t is reflective of the com		inue monitoring staff all protected	This policy promotes a positive	No negative impact identifie	
Do we employ people from		. The Trust employs peop advantaged groups i.e. th		eristics and	and inclusive	at this time.	
disadvantaged groups		e a disability/learning		ing with the local	approach to	at une une.	
alouaramagoa groupo		low social economic sta		aphic figures from	supporting our		
	aloability			incil and ONS.	employees		
Will the service, leaflet or policy/	This poli	cy does not have any dire		inue monitoring this	This policy	No negative	
development	impact o	n the development to imp	prove policy to	o ensure any review	promotes a positive		
i. Improve economic social conditions	economi	c social conditions in dep	orived takes in	ito account any	and inclusive	at this time.	
in		e brown field sites/impro	ve change	s re points i ii iii	approach to		
deprived areas	public sp	aces etc.			supporting our		
ii. Use brown field sites					employees		
iii. Improve public spaces including							
creation of green spaces? Does the service, leaflet or policy/	No it doe	en't	N/A		N/A	N/A	
development promote equity of lifelong	IND IT DOE	500 L	IN/A		IN/A	IN/A	
learning?							
Does the service, leaflet or policy/	No it doe	sn't	N/A		N/A	N/A	
development encourage healthy	110 11 100				11/7		
lifestyles and reduce risks to health?							
Does the service, leaflet or policy/	No it doe	esn't	N/A		N/A	N/A	
development impact on transport?							
What are the implications of this?	1		1				

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Does the service. leaflet or	V Impact Assessment F	N/A		N/A		N/A
policy/development impact on housing,				1.1/7		
housing needs, homelessness, or a						
person's ability to remain at home?						
Are there any groups for whom this policy/ service/leaflet would have an impact? Is it an adverse/negative	No particular group has been identified as having an impact as a result of this policy, whether adverse/negative.	Continue to review the policy in line with legalisation.		This policy promotes a positive and inclusive		No negative impact identified at this time.
impact? Does it or could it (or is the perception that it could exclude				approach to supporting our employees.		
disadvantaged or marginalised groups?	No. 16 do e colt	No. o the second of the	1.0.2.			No. a conflict
Does the policy/development promote access to services and facilities for any group in particular?	No it doesn't	No action required at this time but future reviews might see a change which requires action.		This policy promotes a positive and inclusive approach to supporting our employees.		No negative impact identified at this time.
Does the service, leaflet or policy/development impact on the environment	No it doesn't	No action required at this time but future reviews might see a change which requires action.		This policy promotes a positive and inclusive approach to		No negative impact identified at this time.
During development		requires action.			ting our	
• At implementation?						
	ACTIO	N:				
Please identify if you are now req Analysis	Yes	No	No (Please d appropria			
Name of Author: La Signature of Author:		Date Signed:		April 2023		
Name of Lead Person: Vi Signature of Lead Person:		Date Signed:		ed: Ap	ril 2023	
Name of Manager: Le Signature of Manager		Date Sig		ed:	April 2023	

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