

## **GUIDANCE NOTES ON CARRYING OUT FORMAL INVESTIGATIONS**

### **Introduction**

This document provides guidance on how to carry out formal investigations under BBSRC's Disciplinary and Grievance procedures (Section A12 of the Employment Code).

In some cases an individual may raise an informal/off the record grievance. In these circumstances the following action should be taken:

- acknowledge the complaint
- seek clarification of the nature of the complaint and the individual's desire to keep it off the record
- explain the informal and formal grievance procedures
- consider, in consultation with HR, whether it is appropriate to offer mediation
- if the individual insists on keeping their complaint off the record, attempt to resolve informally
- consider other ways of dealing with the issue, taking into account the duty of care to all employees (e.g. training sessions on appropriate use of banter in the office), and whether the complaint is a 'protected disclosure' under the Whistleblowing Procedure
- if the individual insists on keeping it off the record and it cannot be dealt with informally, this should be confirmed (e.g. ask the individual to retract their complaint or get them to confirm in writing that they do not want any action taken).

### **Purpose of formal investigation**

The purpose of an investigation is to carry out a fact finding exercise with the aim of determining objectively and fairly what is most likely to have occurred in the circumstances.

It should include the following actions:

- collecting evidence and confirming facts
- giving the employee(s) a chance to set out their grievance/offer an explanation
- reviewing all the evidence
- reaching a decision on whether or not a complaint is upheld/there is a case to answer.

It is important that investigations are carried out as quickly as possible and in accordance with the timescales set out within BBSRC policies.

### **Benefits**

A well planned and executed investigation will help to ensure that a fair procedure has been followed in accordance with BBSRC procedures and best practice and that

any subsequent decision is based on sound evidence. This reduces the risk to BBSRC of Employment Tribunal claims, saves time, avoids the need for a re-investigation, and ensures that the principles of natural justice are upheld, including fairness and consistency.

### **Who should carry out an investigation?**

The Investigating Officer is normally a representative from management other than the line manager. As an Investigating Officer you should be impartial and able to apply fairness and objectivity. You should have knowledge of BBSRC's disciplinary and grievance procedures (Section A12 of the Employment Code). Ideally you should have attended training on BBSRC's disciplinary, grievance and capability procedures, and on carrying out investigations.

The Investigating Officer may be appointed from another Institute or BBSRC Office (Swindon) and in such cases it is important to keep in contact during the investigation process and to notify the local/Institute HR team and management of the decision/outcome when the investigation is completed.

If you are involved in carrying out an investigation, you should not be involved in the decision making at any subsequent disciplinary hearing.

The main duties of the Investigating Officer are to carefully weigh up all the evidence obtained before coming to a conclusion, and then to notify the outcome of a grievance or decide whether there is a case to answer at a disciplinary hearing.

During the investigation process the Investigating Officer should maintain contact with all those involved and, in the case of a grievance, keep the complainant updated on a regular basis.

### **Plan and prepare**

In preparation for the investigation you should:

- Ensure that the person under investigation has a clear understanding of the complaint/allegation(s) against them.
- Establish the facts and collect evidence.
- Identify the witnesses you want to see (the person raising a grievance may also identify witnesses); the HR department may assist in making the arrangements.
- Consider the value of other evidence (e.g. computer records, CCTV, documents and files), carrying out any investigation in accordance with BBSRC's Code of Practice covering use of computer facilities and communications systems (appendix A2.2 of the Employment Code).
- Maintain confidentiality and remind all parties involved in the investigation of the requirement for confidentiality.
- Arrange a note taker (usually someone from HR who can also provide procedural advice).

### **Suspension under the disciplinary procedure**

Although the Investigating Officer is not normally involved in a decision to suspend an employee, it should be noted that there may be instances where suspension with pay is necessary during a disciplinary investigation (see appendix Aa12b.7 of the Employment Code). For example:

- where it is deemed necessary to safeguard the integrity of the procedures;
- to protect other employees and/or the person under investigation;
- to provide a 'cooling-off' period; or
- where the employee is suspected of committing an act of gross misconduct which might result in their summary dismissal.

Suspension with pay will be imposed only after careful consideration; it is not an assumption of guilt or a disciplinary penalty in itself.

In some cases where a grievance has been raised it may be considered necessary to separate the complainant and the person complained about (e.g. if it relates to bullying/harassment). Normally the person complained about will be moved, but this may not always be possible e.g. due to the nature of their work. Only in exceptional circumstances may it be necessary to suspend the person complained about (Appendix A12b.5 of the Employment Code).

### **Carrying out searches**

If it is considered necessary to carry out a search of an individual's office, desk or vehicle as part of the investigation, this should be carried out in accordance with section Appendix A12.b.6 of the Employment Code.

### **Interview preparation**

Allocate plenty of time for interviews, ensuring suitable meeting rooms are available and a note taker will be present.

Be clear about the witnesses you plan to speak to during the course of the investigation, including:

- other members of staff who witnessed / took part in the alleged incident
- the person(s) against whom the allegation/grievance is made
- other relevant members of staff within a department or team
- relevant line managers
- any other person who is identified to have information relevant to the investigation, including contractors or visitors.

The witnesses should be interviewed in a logical manner. Generally the person raising the issue/complaint should be interviewed first (unless there are exceptional reasons why this cannot be done), and the person the allegation is against last. It may be necessary to re-interview witnesses during the process; any additional witnesses you become aware of during the investigation must also be interviewed.

In some circumstances a disciplinary investigation may be the result of a grievance that has been upheld. In these cases an independent investigator should be appointed to review the grievance documents, undertake any further investigations (if

necessary), and separately assess whether there is in fact a disciplinary case to answer.

### **Interviewing witnesses/complainant**

It is important to speak to relevant witnesses as soon as possible after the event whilst things are still clear in their mind.

- Identify precisely what needs to be established from each interviewee and prepare accordingly. All questions should aim to encourage witnesses to recall their version of events in their own words.
- Take care to separate facts from assumptions and opinions. It is easy for people to jump to conclusions based on what they have seen or heard, and then assume that these conclusions represent facts.
- Those giving witnesses statements should be made aware that if the case results in a disciplinary hearing, their statement will be copied to the person being investigated, if considered relevant to the case. They may also be required to attend the hearing or to provide further clarification to the disciplinary panel. Anonymity cannot be guaranteed unless there is a genuine fear of reprisal, or the matter has been raised under the whistleblowing procedures (see Appendix a12b.4 and A12d of the Employment Code).
- Employment Tribunals have made it clear that, in the interests of natural justice, an employee should know the essence of the evidence against them.
- Full notes should be made at the time of the interview and these should be agreed and signed by the interviewee as a true record. If the notes are not agreed, any differences should be noted and this should be confirmed to the individual in writing. In addition witnesses may choose to provide an additional written statement. An example template for taking notes and guidance on note taking is at Annex A.
- A witness does not have the same right to be accompanied at an investigative interview as the complainant/respondent, but this could be suggested/offered as best practice.
- Where an individual is accompanied by a TU representative or work colleague, the latter can address the investigator to put across/sum up the individual's case/evidence, respond to any views which have been expressed by others, and confer with the individual. However, they may not answer a question on behalf of the individual.
- It may be necessary to have an adjournment and/or to re-interview witnesses for clarification where matters are contested by the accused or there is conflicting evidence. In addition be prepared to have short breaks where witnesses become upset during the interview.

### **Interviewing the respondent**

Before an investigative interview takes place with the member of staff that the allegation has been made against, they should be informed of the reason for the interview and of their right to be accompanied by a Trade Union representative or work colleague (Section A12 of the Employment Code).

The role of the employee's representative/companion is to support them and includes:

- addressing the investigator in order to put across and/or sum up the employee's case
- conferring with the employee during the meeting.

It does not include answering questions on behalf of the employee or preventing them from explaining their case.

To ensure that the interview is carried out effectively and fairly, as Investigating Officer you should:

- stick to facts and avoid making assumptions
- point out and question any discrepancies
- not be afraid to challenge what the employee is saying
- be careful not to express disapproval or pass judgement on the employee
- make sure the whole story is uncovered
- be prepared to have an adjournment to re-interview witnesses
- be careful not to allow the interview to turn into a disciplinary hearing. The purpose of an investigatory interview is to establish what happened, while the purpose of a disciplinary hearing is to consider the evidence and decide what to do about it.

### **Interviewing**

Questions are asked for a number of different reasons and include for the purpose of:

- gathering information,
- exploring feelings and attitudes, and observing responses
- stimulating thought and discussion
- helping the other person think something through
- clarifying an issue.

Be clear about what you are trying to achieve by posing a question; for example put questions into context by explaining why you need an answer to a sensitive query and use a logical sequence. Adopt a suitable approach and tone, and phrase the questions carefully; re-phrase if required. Observe and check understanding of the answers if necessary.

You should ask probing questions to ensure that all details are as accurate as possible. For example, where timings are involved: how certain is the witness of the timing? Did they record the matter in writing at the time? Are they certain that it was the employee they saw? Is there any other person who could corroborate their evidence or any other facts which may support their view?

### **Questioning guidelines**

Types of questions

- Open – to gain as much information as possible.
- Closed – to gather/check information.
- Reflective – useful for summarising.
- Probing – getting a better understanding.

Suggestions of the types of questions include:

- What did you see?
- Where were you working/standing?
- Who else was around?
- What did you hear?
- How near were you?
- Could you see/hear clearly?
- Have you seen anything like this before in relation to X or anyone else?

Be cautious of the use of “why” questions. These may be interpreted as the question of an accuser and it may encourage a “because” answer. “Because” answers may encourage people to take a stand and so cause a conflict situation during the interview process.

## **The structure of the investigative interview**

### Introduction

Explain the background and context of the interview, the importance of confidentiality in the process and the purpose and use of the notes that will be taken of the meeting.

### Questioning

To establish what actually happened in the particular circumstances.

### Closing statement:

- Explain the next steps.
- Confirm the procedure and timing for sending out the interview notes for comments.
- Advise when the investigation is expected to be completed/timings.
- Confirm the role and responsibilities of the witnesses.
- Ensure that contact details are provided for all parties.
- Reinforce the importance of confidentiality in the process.

At the end of the interview the Investigating Officer should have obtained the following information:

- The names of those present or involved.
- Date/time/place of the alleged incident/allegation.
- Details of what took place and the order of events.

- A response from the complainant/respondent to any other documents or witnesses evidence that is inconsistent with their own.
- The steps that have been taken since the alleged incident/allegation including any steps taken to resolve the issue.
- In the case of a grievance, an indication of what resolution the person making the complaint is seeking, noting that this cannot be guaranteed (e.g. an apology).

### **Guidance on Recording Interviews**

Section A12 of the Employment Code makes it clear that at no stage in the procedure can any party record a meeting, using electronic equipment without prior agreement. However if an employee has a disability we may allow them to record the meeting as a reasonable adjustment. Any such request should be made at least three working days ahead of the meeting.

In any event written notes will be made of the matters discussed and these will be used as the official record of the meeting (see annex A attached – Guidance on Note Taking).

### **Decision making**

Once the evidence has been gathered, you must make a decision as to whether there is a case for the employee to answer at a disciplinary hearing, or the grievance is upheld. It is important to be objective and to take into account all the evidence, including the employee's version of events or explanation of what happened.

The following points should be considered:

- Direct witness evidence will usually be stronger than indirect information relating to the incident/allegation.
- Evidence that is inconsistent with documents/records produced at the time is questionable.
- Any bias or influence an individual may have.

If it appears that a criminal offence has occurred, then consideration will be given to informing the police for further investigation. The Head of HR should always be contacted for advice, and in the case of fraud, the establishment's Audit Committee and the Executive Director at BBSRC must also be informed. (See Appendix A12.b.4 Employment Code - criminal offences within employment).

### **Report writing**

The Investigating Officer should write a report setting out their findings and conclusion and this should be copied to the local/Institute HR team and management to ensure that any recommendations raised during the investigation are addressed.

In the case of a grievance investigation, the report should set out each allegation, the evidence for/against, whether each allegation is upheld or not, whether the matter should be considered under the Disciplinary Procedure. The Investigating Officer may also recommend other action such as training, coaching, mediation etc.

In the case of a disciplinary investigation, where the Investigating Officer decides that there is a prima facie case for the employee to answer at a disciplinary hearing the report should contain the following (N.B. this will be copied to the individual in advance of the hearing):

Introduction – a background of events including a clear explanation of the complaint/incident investigated and details of the employees previous record of service.

Methodology – how the case was conducted/investigated.

Witnesses – provide a summary of witness statements and attach original copies (signed if possible).

Findings based on the evidence – set out the sequence of events/chronology, the evidence established from the investigation (including your assessment of conflicting/contradictory evidence), and any mitigating circumstances.

### Conclusions

- No case to answer - no further action appropriate.
- Informal action (e.g. training, coaching, mediation or guidance, without a disciplinary hearing).
- There is a prima facie case to answer and the matter should proceed to a disciplinary hearing.

The evidence obtained in support of a case does not have to prove the matter “beyond all reasonable doubt” as would be the case in criminal hearings, but on the balance of probability. Employment Tribunals will look at whether the employer had reasonable grounds, based on a reasonable belief after carrying out a reasonable investigation and following a fair procedure.

If, on conclusion of the investigation, a decision is taken that disciplinary proceedings will be commenced against the employee, the employee will have the right to be informed of all the evidence against them so as to have full opportunity to provide a defence.

If the employee is ultimately dismissed, and brings a claim for unfair dismissal to an Employment Tribunal, any indication that the employee was not made aware of all the allegations against them may lead the ET to rule the dismissal unfair.

## **Appeals**

An individual may appeal against the outcome of a grievance investigation or disciplinary hearing.

The purpose of the appeal is to consider whether:

- the correct process was followed
- there was a full and thorough investigation
- there was a reasonable belief, based on reasonable grounds to come to the decision taken
- the decision was reasonable in the circumstances.

## **BBSRC Best Practice Guidance Note**

Usually an appeal will be conducted as a review; the person considering the appeal will have access to all the relevant documentation before inviting the appellant to a meeting to discuss the grounds of the appeal. However, in some circumstances, it may be appropriate to re-investigate/re-hear the issues e.g. if relevant new evidence or circumstances have come to light since the original investigation/hearing.

### **Further Information**

For further advice and guidance contact your HR Manager or a member of HRCSG at BBSRC Swindon Office.

## **Guidance on taking notes at investigatory meetings and/or hearings**

### **Introduction**

This guidance offers some best practice on taking notes at BBSRC investigatory meetings and/or hearings, including appeal hearings. Throughout this document, the term 'investigator' or 'investigator(s)' is used to identify the individual(s) who have been selected to hear the case.

### **Context**

It is preferable if the individual(s) hearing the case do not have to take notes themselves, and have a separate note-taker. The note-taker, usually from HR, can also provide procedural advice, so it is important that s/he is familiar with the process in question (or at least has a copy of the relevant procedure to hand).

On occasion HRCSG can be asked to provide a note-taker for a matter which is being dealt with locally; alternatively it may be case that has been referred to HRCSG.

### **Note-taking (general)**

The notes taken during investigation interviews and hearings are very important. They are written during the interview/hearing and give the best account of what was actually said as opposed to subsequent accounts, which are often less reliable. The notes are normally produced in long-hand and written up electronically later. However, if the note-taker can touch-type, it is acceptable to use a laptop (see below).

The investigator(s) will normally produce a report, setting out their recommendations/findings, but will often not do this until they have a draft version of the interview/hearing notes to hand. It is therefore essential that notes are written up quickly. The interviewee will be asked to confirm the written note and to make any additional comments as necessary. Any disagreement regarding the content is noted in writing, and the interviewee asked to sign and date the notes of the meeting. This process is normally handled by the investigator(s) but they may ask the note-taker to deal with the administrative aspects of this process. Obtaining comments/agreement on notes may not hold up a decision on the case.

Should a case later go to Appeal or Employment Tribunal, the interview notes are 'discoverable' and often provide essential evidence.

### **Right to be accompanied**

An employee who is undergoing disciplinary or capability action has the right to be accompanied by a recognised trade union representative or work colleague during any formal meeting. This also applies in grievance cases, both to the individual taking out the grievance and anyone who is directly accused of an inappropriate action. The union representative/work colleague is primarily there to support and guide the individual, but may occasionally interject and/or provide clarification in particular points. This all needs to be recorded as part of the note of the meeting with the individual in question; a separate note is not required.

## **Tape or electronic recording of interviews**

Occasionally, an employee may ask for their meeting to be recorded. BBSRC's policy is that at no stage in the procedure can any party record a meeting or hearing using electronic recording equipment, without prior agreement. For example it may be allowed for someone who has a disability, as a reasonable adjustment. Any such request should be made at least three working days before the planned meeting. However it should be noted that written notes will be made of the matters discussed; these are not meant to be verbatim but will be an accurate reflection of the points discussed and will form the official record of the meeting. The individual will have an opportunity to comment on the notes of the meeting but this may not delay a decision. Whether comments are accepted or rejected should be notified to the employee. Any disagreements will be noted on the record; this should be confirmed to the employee in writing. The employee and their representative may also choose to take their own notes.

## **Specific guidance on note-taking**

The following points provide some further advice on note-taking:

- If possible, meet with (or speak with if this is not practicable) the individual(s)\* conducting the case beforehand to establish rapport and so that you can become familiar with the names and titles of individuals who are being interviewed. Ideally, you should also be aware of the times of the interviews, domestic arrangements (lunch etc) and travel arrangements.  
\* the investigator(s) may not be BBSRC employees
- Either make notes in an A4 notebook or on numbered sheets to keep everything in the right order. If you can type at a relatively quick speed, there is an option to use a laptop at the meeting and to input directly (remember to save at regular intervals!).
- Write down the date, time and names/titles of everyone present. Make a note of start/finish times for each interview, as well as the time and duration of any breaks.
- In accordance with the Employment Code, notes are taken of meetings and thus, they are not a verbatim record of everything that is said. It is therefore important that the key points are recorded and correctly attributed. However, it is okay (and can be quite useful) to use the language of the interviewee. For example, if someone says they were "gobsmacked", you don't need to try and find an alternative phrase.
- If the interviewee has a prepared statement, this should be copied and appended to the notes. If they read out the statement, you don't need to record it as well, but should refer to it in the notes.
- Write the initial of the person who is asking the questions in the left-hand margin and make notes of the question and a full summary of what the individual actually said in reply - not your interpretation of what was said.
- In some cases witness anonymity may be required; however the initial notes should record the names of who said what. If witness statements are subsequently shared, at that point in time they may be anonymised (e.g. in a whistle-blowing case, using 'WB' as the initials).

## BBSRC Best Practice Guidance Note

- If you need to clarify a point or you cannot keep up with what is being said, interrupt politely and ask for clarification, a point to be repeated or for people to go more slowly/speak more clearly.
- As soon as is practicable, a first draft of the notes should be produced. Each witness account should be produced separately as these are later sent to the witnesses to comment on and sign.
- Send the transcripts to the lead investigator, who will normally forward them to the witnesses. When they are returned and the investigator has indicated whether or not they accept the proposed change, make the necessary changes and send them back to the Chair. Ensure that any disputed points are recorded clearly and concisely. Any delay may not necessarily hold up the decision process.
- Final electronic versions of notes should be saved on a secure site. Hard, signed copies should be placed on the case file. At this stage original handwritten notes may be shredded. All papers can be destroyed when a case is completed and appeal/ET deadlines passed.
- You should treat all information in confidence and maintain confidentiality at all times; do not discuss the case with anybody outside of the investigation/hearing/appeal panel.
- An example note-taking template is reproduced below:

**BBSRC Best Practice Guidance Note**

**Example format for taking notes during an investigation/hearing/appeal:**

Name of Interviewee	
Name of Interviewer(s)	
Name of Note taker	
Name of Employee's representative	
Date	
Start/finish time	
Location	

	Notes
<p>Opening</p> <p>Include note of:                      Introductions                      Explanation of structure</p>	
<p>Main Body</p> <p>Number paragraphs for ease of reference</p>	<p>&lt;Initials of person asking&gt; Question...                      &lt;Initials of person responding&gt; Answer...</p>
	<p>Question...                      Answer...</p>
<p>Close</p> <p>Include note of:                      Any summary                      Next steps and timescales</p>	