Healthier Communities, Outstanding Care

Sherwood Forest Hospitals
NHS Foundation Trust

# Guidance Document for Case Managers and Investigating Officers

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## Section 1 – General Information
## Introduction

**This guidance document should be used in conjunction with the Trust's Disciplinary Policy and aims to provide a framework for the investigation process for both Case Work Managers and Investigating Officers.**

### What is an investigation?

An investigation is a systemic and thorough attempt to learn the facts about something that can be sometimes complex or hidden; it is an exercise to collect all the relevant information on a particular matter. A properly conducted investigation can enable the Trust to fully consider the matter and make an informed decision on it.

Making a decision without completing an objective investigation can make any subsequent decisions or actions unfair, and then leave the Trust vulnerable to legal action and reputational damage.

Where a situation or issue occurs, following an initial fact finding assessment, the appropriate action will be determined on how to proceed in consultation with the relevant Senior Line Manager and Human Resources. The potential routes to pursue include;

- No further action notice / reflection and learning / a quiet word or discussion about the issue
- To be managed under the relevant formal Policy
- Improvement Notice
- Formal investigation (for cases of potential misconduct or gross misconduct)

Incidents and issues are inevitable in any workplace and ensuring that they are dealt with fairly and consistently may mean that they need to be investigated.

In the first instance, the Trust should consider whether an informative conversation or informal action may be sufficient to resolve the matter; most problems that arise can be resolved quickly without undue process and learning taken from the situation; Informal action should be documented as a file note and kept in the employee's personal file.

Where the evidence or case following a fact find is not substantiated or it is clear that no misconduct has occurred, the line manager will ensure that the relevant parties are informed of this and the matter is closed. It may be at this point that all is needed is a quiet word or clarification. However, if it appears that a complaint was raised maliciously then disciplinary action may be taken against the complainant.

Where a fact find takes place and would suggest that there is a case to be investigated, a Case Manager will be appointed to own the management of the investigation.

## 1. The role of a Case Manager

The role of a Case Manager is to lead and be responsible for managing the overall investigation process, including the allocation of administration support and for bringing the investigation to a timely conclusion.

The Case Manager will appoint an Investigating Officer to carry out the investigation; in doing so the Case Manager should ensure that the appointed Investigating Officer has the relevant skills to carry out the investigation and has attended the Trusts Investigation Officers training course. The Operational HR team have compiled a register of trained investigators from different divisions and areas of expertise within the Trust, the Case Manager should consult with the Operational HR team if needed, to appoint a suitable Investigating Officer.

The Case Manager will want to consider the following when appointing an Investigating Officer;

- Is the person in mind personally involved in the matter being investigated?
- Would the appointment raise any conflict of interest?
- Are they likely to be influenced by people involved in the matter?
- Might they be involved in any subsequent decision making on the matter?
- What is their availability during the investigation's provisional timeframe, and do they have capacity to take on the investigation?
- Are they trained and/or experienced in how to conduct investigations?
- How confident are they at communicating in writing and/or verbally?

Dependant on the nature of the issue being investigated, the Case Manager will need to assure themselves that the Investigating Officer will be a suitable candidate for the role. Once an Investigating Officer has been appointed the Case Manager with the support of the nominated HR representative will compile a term of reference, the term of reference will include the allegations to be investigated, the policies and codes of conduct relevant to the investigation, and the timescales involved. The document will stipulate whether suspension has been necessary and if so who will act as a mentor to the employee during the investigation period. The term of reference will also contain details of any trade union involvement. The document should be signed by both the Case Manager and the Investigating Officer. The term of reference can be updated at any time during the investigation.

The Trust has a template for a term of reference document; this can be found on the Trusts intranet website under the disciplinary toolkit. The Terms of Reference will be prepared by the HR representative in conjunction with the Case Manager and signed by the Investigating Officer and Case Manager, and should always include;

- The purpose of the investigation
- The allegation(s) being investigated
- The scope of the investigation
- Provisional timeframes of the investigation
- Responsibilities of the Investigating Officer and HR
- Trade Union involvement
- Suspension or restrictions to duty
- That the Trust reserves the right to amend the Terms of Reference if additional allegations arise during the investigation process.

**A Comprehensive Terms of Reference can:**

- Help complete the investigation in a timely manner
- Clarify exactly what the Investigating Officer's remit is
- Ensure all key facts are responsibly investigated
- Ensure only information and facts relevant to the case & allegation(s) are collected
- If new issues come to light during the investigation process, the Investigating Officer and Case Manager may agree to review and amend the Terms of Reference, or authorise a further investigation.  The Case Manager will need to liaise with HR and inform the member of staff.
- The HR representative will with the Case Manager update the Terms of Reference and place and updated copy on the employees HR folder.

The Case Manager can extend the timeline for investigation on behalf of the Investigating Officer; this should be discussed with, and authorised by, the Case Manager. The Case Manager is required to liaise with HR and inform the member of staff accordingly. Whilst an investigation should be completed as quickly as is practical, it also needs to be thorough and fair, this is particularly important where the matter could result in disciplinary action or where an Employment Tribunal claim could follow. Any delay to the investigation should be explained to those involved and included in the report.

The Case Manager will update the employee regularly on the status of the investigation.

If new issues come to light during the investigation process, the Investigating Officer will discuss this with the Case Manager who may agree to review and amend the Terms of Reference, or authorise a further investigation. The Case Manger will need to liaise with HR and inform the member of staff. The HR representative will update the Terms of Reference, with the Case Manager and ensure all parties sign the document.

The Case Manager will usually be involved in the decision making around suspension during the investigation if necessary.  Alternatives to suspension should  always be discussed and if the matter to be investigated is a safeguarding incident, the Case Manager will refer to the Trust's "Just Culture Guide," (see Appendix 1) The Just Culture guide supports consistent constructive and fair evaluation of the actions of employees involved in patient safety incidents. It is also the Case Manager's responsibility to work alongside Safeguarding when this is applicable to the investigation.

**T**he majority of investigations can be conducted without removing a staff member from their usual working environment. However, on occasions, for differing reasons the Trust may need to consider taking a temporary measure whilst an investigation is conducted and the Case Manager will make the overall decision.

The Case Manager should be able to evidence that they have considered an alternative to suspension; this will also need to be recorded in the investigation report; the consideration of alternatives to suspension is an important factor in relation to the employee's wellbeing during the investigation; the Case Manager should also ensure that the employee has been referred to Occupational Health and that any recommendations or adjustments are considered and where appropriate acted upon. Dependant on the case and the reasons for investigation, how long the investigation takes to produce a report etc the Case Manager may consider an additional referral for the employee to Occupational Health during the investigation period.

During the investigation it is important that the Case Manager maintains regular contact with all parties involved during the investigation, including reviews of exclusions and/or restrictions of practice, and temporary redeployments during the investigation period; these reviews should take place regularly and be made in conjunction with another Senior Manager in line with the Trusts Disciplinary policy.

On completion of the investigation and on reviewing the report and information provided by the Investigating Officer, the Case Manager must then make a decision on how to proceed;

The options are usually a recommendation for;

1) No case to answer
2) Improvement Notice
3) Fast track process (where the employee has taken full responsibility for their actions)
4) Formal disciplinary hearing

The Case Manager can act as Chair at a formal hearing but can also ask another Senior Officer to chair the hearing. The Case Manager may want to discuss this with the Head of Operational HR to obtain a view on this. The Case Manager if acting as Chair at the formal hearing should cite the Trusts 'Role of the Chairperson' available on the Trusts HR Operational intranet site.

See Case Managers Checklist appendix 2.

## 2. The role of the Investigating Officer

The role of an Investigating Officer is to be fair, objective and impartial so that the facts of the matter are established enabling the Case Manager to reach a conclusion on how an event did or did not happen. An Investigating Officer should do this by providing evidence that both support the allegation being investigated, as well as evidence that contradicts it.

In potential disciplinary matters, it is not the Investigating Officers role to prove the guilt of any party, but to investigate whether or not there is a case to answer by collecting relevant information and facts and presenting these to the Case Manager in a form of a report.

An Investigating Officer should have undertaken the Trusts Investigating Officer training course and have read the Trust's Disciplinary Policy before undertaking any kind of investigation; individual training can be arranged via the Trusts HR Operational Team where an appointed officer has not undertaken recent training. The Investigating Officer will receive support from a HR representative from the HR Operational team during the investigation.

The Case Manager will give the Investigating Officer a copy of the relevant term of reference that has been compiled; the Investigating Officer will sign this and agree to the content.

Confidentiality is of prime importance during an investigation, this duty applies to both the person conducting the investigation and to any witnesses; keeping the investigation and the investigation detail confidential can reduce any negative impact to a party involved in the matter and help to ensure that staff morale is not unnecessarily affected.

A really important aspect of the investigation is that the Investigating Officer should ensure that they have the time to conduct such an Investigation, as this should be conducted as quickly as is reasonably possible.

The Investigating Officer should remain objective during the investigation and remember that the role is to collect the facts.

The Investigating Officer will need to update the Case Manager and the employee about the investigation regularly, and should consult with the appointed HR representative about the necessary timescales. Maintaining communication with the employee during the investigation period is essential and the Investigating Officer should provide regular updates explaining at what point the investigation is; the Investigating Officer should not be explicit in the detail but be clear about the stage the investigation is at. The Investigating Officer will need to decide who should be interviewed as part of the investigation and whether there is a need to discuss with specialist teams within the Trust which may include Safeguarding; Counterfraud or Information Governance dependant on the detail of the investigation.

If during the course of the investigation the Investigating Officer believes there may be no case to answer they should discuss this with the Case Manager prior to continuing with the investigation, or compiling a report, as this may negate the need for a full report.

Another instance where a report may not need to be written is where the individual admits to the allegation(s) being investigated and can be offered a fast track written warning. This should be agreed in partnership with the HR Representative; otherwise once an Investigating Officer believes they have established the facts of the case, as far as if reasonably possible and appropriate, they will need to produce an investigation report that details their findings.

An investigation report should cover all the facts that were and were not established, and whether there were any mitigating factors that also require consideration. To exclude any information may leave an investigation open to accusations of bias and filtering evidence to suit their findings.

The report should reflect the Investigating Officer's own conclusions. Whilst an Investigating Officer may seek advice from a third party such as HR, the conclusions should be their own. The HR Representative will support the Investigating Officer to write and format the report, including attaching any appendices. Should the case proceed to a formal hearing, the Investigating Officer and HR representative will be required to attend a disciplinary hearing to present the findings of the report.

An Investigating Officer should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. An Investigating Officer will need to decide whether, on the balance of probabilities, they could justifiably support one version of the matter over another and explain why.

Unlike criminal law, an Investigating Officer conducting an investigation does not have to find proof beyond all reasonable doubt that the matter took place. An Investigating Officer only needs to decide that, on the balance of probabilities, an incident is more likely to have occurred or not.

- When complete the report should be sent to the employee under investigation and be sent at least seven days before the arranged hearing
- HR will ensure that a copy of the report is saved electronically and stored on the HR disciplinary cases folder
- Following the hearing an outcome letter will be sent to the employee and a copy sent to their Manager for personal file purposes.
- Following any formal hearing HR will organise a meeting with the Case Manager, Investigating Officer and HR representative to discuss the case and provide feedback and any learning.

It is not the  Investigating Officers role  to suggest a possible sanction or prejudge what the outcome of the disciplinary hearing will be but could suggest recommendations that they feel may be beneficial to consider as part of the conclusion to their findings.  The outcome of the hearing lies with the Chair of the hearing (or the Case Manager).

See Investigating Officer Checklist appendix 3

## 3. The role of the HR representative

The role of the HR representative is to advise on policy, procedure and process to support and fair and consistent approach. It is not the role of HR to lead and make any decisions about the outcome during the course of an investigation; this must lie with the Investigating Officer to discuss with the Case Manager who has the ultimate responsibility for any outcome of the investigation; the Case Manager can ask HR for advice if needed.

The HR representative will also act as the administrator for the investigation. The role of the administrator is to provide admin support, and support both the Investigating Officer and Case Manager in maintaining effectual communication with the employee.

- Any administration task where communication is required to any party concerned.
- To support and provide advice on the support mechanisms available to the member of staff under investigation
- To attend and transcribe notes during the interview process.
- Advise witnesses on their role and the process
- Ensure appropriate updates to the employee are sent in conjunction with the Case Manager and investigating officer
- To assist with the collation of investigation reports and packs.
- To keep a timeline of events.
- Ensure that effectual communication is maintained between all parties
- To ensure advice is given regarding the appropriate support mechanisms during and following disciplinary action.

**NHS Improvement**

# A just culture guide

## Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a conversation between managers about whether a staff member involved in a patient safety incident requires specific individual support or intervention to work safely. Action singling out an individual is rarely appropriate - most patient safety issues have deeper causes and require wider action.

The actions of staff involved in an incident should **not** automatically be examined using this *just culture guide*, but it can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member.

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, patients and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made. As well as protecting staff from unfair targeting, using the guide helps protect patients by removing the tendency to treat wider patient safety issues as individual issues.

**Please note:**

- **A just culture guide** is not a replacement for an investigation of a patient safety incident. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
- **A just culture guide** can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
- **A just culture guide** does not replace HR advice and should be used in conjunction with organisational policy.
- **The guide** can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident they must be considered separately.

### Start here - Q1. deliberate harm test

**1a. Was there any intention to cause harm?**

**Yes** → **Recommendation:** Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff, and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual. **END HERE**

### No go to next question - Q2. health test

**2a. Are there indications of substance abuse?**

**Yes** → **Recommendation:** Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier. **END HERE**

**2b. Are there indications of physical ill health?**

**2c. Are there indications of mental ill health?**

**Yes** → **Recommendation:** Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier. **END HERE**

### if No to all go to next question - Q3. foresight test

**3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?**

**3b. Were the protocols/accepted practice workable and in routine use?**

**3c. Did the individual knowingly depart from these protocols?**

**If No to any** → **Recommendation:** Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual. **END HERE**

### if Yes to all go to next question - Q4. substitution test

**4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?**

**4b. Was the individual missed out when relevant training was provided to their peer group?**

**4c. Did more senior members of the team fail to provide supervision that normally should be provided?**

**If Yes to any** → **Recommendation:** Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual. **END HERE**

### if No to all go to next question - Q5. mitigating circumstances

**5a. Were there any significant mitigating circumstances?**

**Yes** → **Recommendation:** Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. **END HERE**

### if No

**Recommendation:** Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. **END HERE**

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Based on the work of Professor James Reason and the National Patient Safety Agency's Incident Decision Tree

Supported by: Academy of Medical Royal Colleges, AvMA, BMA, Care Quality Commission, National Guardian Freedom to Speak Up, General Medical Council, NHS England, Nursing & Midwifery Council, Royal College of Nursing, Royal Pharmaceutical Society, UNISON Health Care, Unite

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**Appendix 2**

## Case Manager's Checklist – Investigation Cases

- To consider information collated via the fact find.

- Commissioning a full and transparent investigation into allegations raised in accordance with this policy.

- Discharge their duties in accordance with this policy and the Disciplinary Policy Guidance document appointing an investigating officer in conjunction with the HR Operational Team.

- Consider any restrictions or suspension with advice from the Head of Operational HR

Ensure that the employee is referred to Occupational Health

- Develop terms of reference for the investigation and amend and review as necessary.

- Maintain regular contact with the investigating officer.

- Review the progress of the investigation ensuring it is conducted in a timely manner.

- Review any suspension/restrictions on a fortnightly basis and consider if these are still required.

- Decide if there is a case to answer or not upon completion of the investigation.

- Identify the chair of any potential panel consulting with the Head of Operational HR if necessary

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**Appendix 3**

## Investigating Officer – Checklist

- Understand be fully aware of the disciplinary policy and guidance; conducting investigations accordingly. Ensuring confidentiality is maintained at all times
- Investigate and establish the facts in the case by holding fact finding interviews, gathering statements and data/evidence as appropriate
- Produce an investigation report based on factual evidence for the Case Manager
- To regularly update the Case Manager and make them aware of any additional allegations or concerns that arise during the investigation.
- Regularly updating the employee in relation to progress, any delays and the reasons for these
- Present the investigation report at a disciplinary hearing if applicable
    - The Investigating Officer should have attended the Trusts Investigating Officers training course