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# **Version control**

This document is subject to regular review due to legislative and policy changes. The latest versions of all our publications can be found on our website. Before contacting us about the content of this document, we recommend that you refer to the most recent version on the website and any relevant guidance.

Version	Date approved	Approved by	Notes / changes
v1.0	20/07/11	LJCC	New framework
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#### **TIMESCALES**

# Roles and Responsibilities during the Investigation Process (these lists are not exhaustive)

The **Employee** is responsible for:

- carrying out duties efficiently and safely
- · co-operating with supervisors and line managers
- adhering to agreed start and finish times
- not taking time off work without good reason or prior agreement
- not indulging in disruptive or antisocial behaviour
- being courteous and considerate in all dealings with fellow workers and service users
- not undermining or damaging the Council's reputation or business dealings
- not disclosing to unauthorised third parties any information concerning the Council's activities (except in the case of whistle- blowing)
- not misusing or abusing the facilities and equipment at their disposal, including internet, email, telephones, vehicles, equipment
- ensuring conduct outside the workplace does not conflict with ability to satisfactorily perform duties or bring discredit to the Council
- co-operating with the investigation process
- maintaining confidentiality The Manager is responsible for:
- managing conduct, reviewing circumstances, determining appropriate course of action
- ensuring that the Investigation Framework is followed
- referring to the Council's Safeguarding Panel for child protection or vulnerable adults issues
- seeking support and advice from Human Resources as and when required
- notifying the HR Business Partner of any formal procedures under this procedure
- ensuring that all admin tasks under this policy are carried out
- addressing concerns of minor misconduct with employees and agree targets and timescales for improvement

- ensuring that all employees are treated fairly and consistently
- ensuring that contact is maintained with the employee throughout the process

#### The **Head of Service** is responsible for:

- appointing a Deciding Officer and Investigating Officer
- carrying out the role of Deciding Officer in complex cases, or gross misconduct cases
- authorising an act of suspension along with the Service HR Business Partner

#### The **Deciding Officer** is responsible for:

- compiling the terms of reference and informing the employee of allegations and formal process
- reviewing the investigation report and deciding what action to take
- chairing the disciplinary meeting and deciding on the appropriate disciplinary action to take

#### The **Investigation Officer** is responsible for:

- carrying out investigation and producing a report of findings to the Deciding Officer
- attend disciplinary meetings to present the information and answer questions

#### **Human Resources** are responsible for:

- monitoring, use, application, and reviewing the policy
- providing support, advice and guidance to managers and employees
- coaching and mentoring managers who have little or no experience of this policy and procedure
- attending disciplinary meetings as and when required
- attending disciplinary meetings which are dealing with complex or gross misconduct issues
- ensuring that all disciplinary actions are recorded on the HR system and are processed in line with Data Protection legislation
- attending all appeal meetings
- advising on an act of suspension along with the relevant Head of Service

### **Framework Statement**

The Investigation Framework provides guidance and advice for managers tasked with carrying out employment investigations. The Framework should be used and read in conjunction with the following DCC policies:

- Anti-Bullying and Harassment Policy:
- Capability Procedure:
- Disciplinary Procedure:
- Grievance Procedure:

The Framework also takes account of relevant Employment Law and the revised ACAS Code of Conduct (2009).

Nothing in this guidance removes or replaces the prerogative of a manager to give an employee management advice, when the employee has committed a minor infringement of the Denbighshire County Council standards outlined in the above policies.

Each investigation will be different, and the approach taken will be dependent upon the nature of the allegations. The process outlined in this document is designed to be a guide and is not prescriptive.

Guidance notes in managing internal investigations will help to ensure that the council carries out all investigations in a fair, consistent and professional manner.

A thoroughly planned and well executed investigation will ensure the council has followed a fair procedure, and that any subsequent action taken is based on sound evidence. This will help to fulfil the council's legal obligations, and should help to avoid unnecessary Employment Tribunal claims or improve their success when they cannot be avoided.

#### **Aims**

This document aims to provide Managers and employees with a concise procedure for dealing with investigations in order to ensure fair, consistent treatment for all employees throughout the council.

# Application/Scope

The investigation framework principles apply to all employees of Denbighshire County council, full-time, part-time, fixed term and temporary employees who have an employment contract with the council, regardless of the hours worked.

An investigation may be undertaken in conjunction with the following policies:

- Disciplinary policy
- Grievance procedure.
- Bullying and harassment
- Capability

## **Engagement /Participation/Consultation**

This policy has been drafted taking account issues raised by employees attending Staff Road shows & Breakfast meetings. It has also been consulted and negotiated with the Senior Leadership Team, managers and Trade Unions.

# **Legal & Other References**

The policy complies with the statutory minimum set out in the Human Rights Act 1998 and with consideration to the following legislation:-

- Employment Act 2002
- Employment Rights Act 1996
- Equality Act 2010

No job applicant or employee will experience discrimination, harassment or bullying, or receive less favourable treatment because of their age, disability, gender reassignment, marital or civil partnership status, race, pregnancy or maternity, religion or belief, sex, sexual orientation or caring responsibilities.

In accordance with Denbighshire County Council's Disciplinary policy, any disciplinary investigation will not be prevented because the alleged misconduct may be the subject of

criminal proceedings. The Council may reach its own decision based on the available evidence and on the balance of probability.

### Fraud, Theft and Financial Irregularity Child Safety

If the allegations involve suspected fraud, theft, irregularity, improper use or misappropriation of the Council's property or resources, the Head of Finance and Assets and Head of Internal Audit Services should be advised before any decision on the course of action is taken.

In the event of allegations arising concerning the safety of a child, immediate contact must be made with Denbighshire's Children's Social Services Department via the First Contact Team in accordance with the All Wales Child Protection Procedures 2008 who will arrange a Strategy meeting involving the Police.

### **Framework Details**

### What is an Investigation?

The purpose of an investigation is to determine all the facts associated with the allegations and establish whether there is a case to answer. Investigators should adopt a holistic approach examining the case from all angles, collecting evidence from management, employee and organisational perspectives. The investigator will interview all relevant people and analyse any related documentation. In all cases, an investigation should take place as soon as possible and in line with appropriate timescales.

It is important that all investigations are conducted to the highest standards.

## When should internal investigations be used?

Internal investigations may be required to be carried out in the following circumstances:

- Allegations of misconduct
- Allegations of bullying / harassment
- · Dealing with employee grievances
- Dealing with employee capability issues.

Internal investigations must always be carried out in accordance with the relevant policy / procedure as determined by the issue in question.

Any investigation must ensure that decisions and actions taken are:

- proportionate
- relevant
- accountable
- legally and procedurally compliant.

It is important to carry out all investigations without unreasonable delay to establish the facts of the case. The nature and extent of an investigation will depend on the seriousness of the matter – the more serious it is then the more thorough the investigation should be.

### **Contact and Updates**

Contact should be maintained with all parties throughout the course of the investigation.

The Clerk appointed to the investigation should provide standard updates by letter or other agreed means at 6 weekly intervals.

If the employee has been referred to Occupational Health, they should also be included in the progress of the investigation at 4 weekly intervals and on conclusion of the case.

# What should happen if a person believes they are stressed?

Following a discussion, it may be appropriate for the employee to complete a Stress Questionnaire. Alternatively, the employee may wish to complete one themselves, without their Supervisor/Line Manager intervention.

This questionnaire can be provided by the Occupational Health Department, together with further advice on the outcome of the completed questionnaire and any support provision available from the council.

### Representation

An employee will have the right to be represented or accompanied at any formal part of the procedure by a Trade Union representative or workplace colleague. The employee will be informed of these rights prior to any formal interview.

Although the employee does not have the right to representation at informal meetings, the council will allow a Trade Union representative or workplace colleague to accompany employees to any informal meetings.

If the employee is not a member of a Trade Union they may request support from an HR Officer or independent middle manager who can talk them through the process and provide advice on their rights. The HR Officer or manager will not however be able to attend any meetings with the employee and the employee should therefore seek support from a colleague if they wish to have a representative with them.

It will be up to the employee to arrange for someone to attend the meeting in this capacity. Should their chosen companion not be available on the day of the meeting, then the employee should attend on their own, arrange for someone else to accompany them or request a postponement.

External legal representation will only be permitted in cases where proven allegations of misconduct would lead to the employee's referral to the Independent Safeguarding Authority or statutory registration body.

If an employee in this situation wishes to be represented by an external legal representative they must advise the Deciding Officer at least five working days prior to the disciplinary hearing.

### The Procedure

### Format for the Investigation

### Investigation

Complaint or allegation is received, the appropriate Head of Service will appoint a Deciding Officer and a clerk to assist with the administration of the case and act as note-taker during interviews and meetings.

In accordance with the relevant policy, the Deciding Officer may be able to proceed without further investigation. If not, and a detailed investigation is required, the Head of Service will appoint an Investigating Officer.

#### **Set Terms of Reference**

At the outset of an investigation, 'terms of reference' must be set. These should be compiled, with the help and advice of HR if appropriate, and agreed by the Deciding Officer. Terms of Reference set out the guidelines for an investigation and give specific direction on what allegations should be investigated and the proposed timescale for the investigation.

Terms of Reference are essential in that they provide the investigating officer with a clear understanding of what issues are to be investigated. It is important to keep the investigation within the agreed terms of reference, and not to be side tracked into dealing with other issues.

Terms of Reference should be clear, unambiguous, and tightly drawn to provide focus and direction. In any employment investigation, the possibility of lessons to be learned should also be included.

Terms of Reference should include:

- · how the investigation has evolved
- the specific allegations to be investigated
- the relevant policy in accordance with which the investigation is being carried out

- names of the personnel involved in the investigation Deciding Officer, Investigating
   Officer, Clerk etc
- brief of the Investigating Officer i.e. to undertake a detailed and thorough investigation through interview and review of data
- / provide a written report on the case to include recommendations or opinion if requested
- that all interviewees will be given the right of representation in accordance with the council's procedures
- that documentation is not withheld from the Investigating Officer
- the proposed timescale for the investigation

### **Investigation Plan**

An agreed 'investigation plan' ensures that the Investigating Officer does not miss important matters or focus on the wrong issues. Investigation planning brings balance and focus to the process.

A clear starting point helps the Investigating Officer to know what questions to ask and provides a reasonable idea of the main issues.

An 'investigation plan' is not an attempt to second guess what the evidence is, or how best to build a case, but it is a thought out approach to determining what initial evidence is necessary, and how best to go about obtaining evidence.

The plan should include:

- analysis of the initial allegation / misconduct identifying the precise issues to be investigated
- list of potential interviewees and witnesses
- review of personal files, available from HR and line manager to establish employment history, including past management or disciplinary action
- documents or other material to be considered
- review of any other relevant material gathered at the outset of the investigation i.e.
   memos, letters of complaint, allegations etc

- risk assessment issues which may jeopardise the investigation or hamper progress e.g. uncooperative staff, malicious or vexatious concerns, absence of potential witnesses, contamination of evidence etc
- additional resources that may be available to the investigating officer i.e. secretarial support, access to legal advice, expert opinion etc

(See 'Investigation Plan' Template Appendix 1)

### **Evidence Gathering**

The word evidence does not imply guilt of a particular individual. The evidence could prove innocence rather than guilt which could ultimately lead to disciplinary action involving a different individual. Therefore, it is essential that any evidence is not compromised in any way.

The Investigating Officer should be clear about what documents and evidence are required to effectively conduct the investigation and not just rely on witness statements as this may result in other crucial evidence being overlooked. If any evidence is likely to perish or be removed, it should be treated as a priority.

### Evidence may include:

- correspondence and internal memos
- notes of meetings and telephone calls
- · diary entries
- emails
- background documents such as procedures, policies, contracts, job descriptions etc
- computer records, printouts etc
- photographs, CCTV footage
- witness statements, interview notes etc

In order to complete their investigation, the Investigating Officer will have the right to access emails sent and received by the employee. The employee will be informed at this stage but has no right to refuse access to their email account.

### **Conducting Interviews**

A reasonable order for conducting interviews would be:

- the person who has made the allegation
- any witnesses
- the person subject of the allegation

Almost all investigations involve interviewing witnesses, and the investigating officer must impress upon witnesses the seriousness of the investigation and the need for complete confidentiality. Witnesses and any other persons present must not discuss the investigation with others. To this end, all those present will be asked to sign a confidentiality agreement prior to commencing the interview. (See 'Confidentiality Agreement' Template at Appendix 3)

#### **Interview Plan**

(See 'Interview Plan' Template at Appendix 4).

The manager should ensure that they are properly prepared for the interview by completing an interview plan. The plan should set out what they want to achieve, as the result of the interview will maintain the focus on specific issues.

#### Interviews should:

- be properly planned and structured
- be held in a confidential environment
- take into account the individual needs of the interviewee or any other person attending the interview e.g. disability, language, gender, ethnicity
- be held with one person at a time. To avoid suggestions of collusion, the investigating officer should ensure that any employee representatives are not potential witnesses.

The investigating officer should make a note of why each witness was interviewed in their Decision Log and, in the case of witnesses, state their relationship to the main parties of the investigation.

#### **Witness Statements**

A witness statement is a signed written statement setting out the evidence a witness will give. The statement should as far as possible be expressed in the witness' own words and following the train of events as the witness experienced them. The statement should be as concise as the circumstances of the investigation allow and the following principles should apply:

- the statement should only contain facts relevant to the investigation.
- no pressure of any kind should be placed upon a witness to give other than a true account of their evidence.
- the statement must be signed by the witness and contain a caption that he or she believes the facts stated in the statement are true.
- typed copies should be prepared within 5 days of the interview, agreed by those attending the interview and distributed to all parties.

# **Investigation Report**

(See 'Report Template' at Appendix 7)

When the investigation is complete the Investigating Officer will prepare a final report. The report should include:

- numbered pages and paragraphs
- an introduction
- allegation(s)
- Terms of Reference
- an outline of the investigation summarising the witness evidence and content of any documents

- conclusions list the allegations / issues individually the conclusions should be clear and concise
- recommendations whether there is a case to answer; a need for training etc
- organisational learning this can be additional to the report –any recommendations relating to system, policy, procedural or management weaknesses – which can be forwarded to the appropriate Head of Service.

The following supporting information should also be included:

- an index of all documents
- witness statements
- records of Interviews
- other relevant documents e.g. letters, memos, computer printouts, previous history etc (See 'Document Index' Template at Appendix 8)

# **Outcomes of the Investigation**

In making recommendations it is important to properly evaluate the evidence in order to make realistic and objective recommendations. The Investigating Officer also needs an understanding of the policies and procedures concerning discipline, grievance and capability.

Possible outcomes of the investigation are:

- No further action
- Proceed to Disciplinary hearing
- Refer to Grievance procedure
- Capability issue which will be addressed through further clarification, improvement note or training
- Mediation

### No further action

If it is decided that there is no case to answer the employee will be notified, usually in writing. No records relating to the case will remain on their personnel file.

### **Disciplinary Hearing**

For an allegation to be heard at a disciplinary hearing, there must be some kind of misconduct involved. Misconduct can be described as some kind of wrongdoing or deliberate neglect. Examples may be a breach of a particular council policy, or some kind of inappropriate behaviour e.g. bullying or harassment.

#### **Grievance**

It may be that having evaluated the evidence, the Investigating Officer considers that the issue can be dealt with in accordance with the Grievance Policy.

Grievances are concerns, problems or complaints that employees raise with their employers.

An example may be where an employee has made an allegation that their manager is bullying them. The investigation may reveal that no bullying has taken place, but the manager has been giving proper instructions to the employee to carry out various tasks and the employee has taken objection to this.

## **Capability**

A capability issue is one where the employee has not been performing to the standard required. The investigation has revealed that this is because of one or more of the following reasons:

- inadequate training
- inappropriate tools or equipment
- medical inability, possibly due to failing health
- an innate inability for the duties of the post.

Depending on the reasons behind the capability issue, the Investigating Officer may recommend further training or relocation to a different role.

#### Mediation

Mediation can be an effective way of resolving disputes in the workplace. It can help to restore and maintain workplace relationships.

The process is undertaken by an independent person to help the parties involved resolve their differences and reach an amicable solution. However, it should be remembered that mediation is entirely voluntary and that neither party can be forced to participate.

## **Role of Presenting Officer**

If the outcome of the investigation leads to a disciplinary hearing, then the investigating officer will take on the role of Presenting Officer.

The role of the Presenting Officer is to outline the management case against the employee. This will involve:

- reading out a summary of the case
- calling any key witnesses
- reading written witness statements
- directing the Deciding Officer to any documents to be considered
- asking questions of the employee or any witness
- answering questions from the employee or their representative. (See 'Management Case Presentation' Template at Appendix 10)

# The Investigatory Interview

# Format for the Meeting

Once all the information / evidence has been gathered, the Investigating Officer will arrange an investigatory interview with the employee and will therefore need to:

- inform the employee in writing stating their right to representation by a work colleague or union representative
- book a suitable room for the interview, ensuring it is confidential and free from interruptions
- cater for any disabilities the employee or representative may have
- prior to the investigatory interview, the investigating officer should review the employee's personal record to ascertain their employment history
- questions for the investigatory interview should be prepared and cover all relevant points (See 'Interview Plan' Template at Appendix 4)

At the investigatory interview you should ensure that the employee is aware of the following:

- that it is an investigatory interview and the format for the interview
- all those in attendance
- the actual allegation
- the investigation to date whether you have interviewed witnesses etc
- that notes will be taken and they will form a formal record of the meeting

When asking questions, allow the employee to respond in full. Throughout the interview, either party may ask for an adjournment to consider information.

At the conclusion of the interview, the Investigating Officer should ensure that the employee has nothing further to add. Explain that either further investigation may be required (particularly if new information has come to light), or that the final report will be submitted for consideration by the Deciding Officer and they will be notified of the decision in writing:

The notes of the investigatory meeting should be signed as a true record by all those present. If the employee refuses to sign the notes, then the document should be endorsed to reflect this.

### What if the Employee admits to a Criminal Offence?

If the employee admits to a criminal offence during the course of the interview, the Investigating Officer should make a note of the admission and the time it was made and follow the usual procedure of allowing the employee to read through and sign the notes. The interview should then be terminated and advice sought from HR. Failure to terminate the interview may make such unsolicited comments inadmissible should the matter progress to a criminal court.

### Presenting Evidence at a Hearing

If the outcome of the investigation leads to a disciplinary hearing, then the investigating officer will take on the role of Presenting Officer.

The role of the Presenting Officer is to outline the management case against the employee. This will involve the following:

- · reading out a summary of the case
- · calling any key witnesses
- reading from the statement (where appropriate) of any witness the investigating officer intends to rely upon
- directing the Deciding Officer's attention to any documents to be considered
- asking questions of the employee or any witness
- answering questions from the employee or their representative. (See 'Management Case Presentation' Template at Appendix 10)

# **Summary of the Case**

A concise summary should be prepared outlining the management case. This can be prepared from the final report. It should contain an outline of the investigation, the specific allegations and the evidence to be considered (e.g. details of witnesses to be called, other witness evidence, documents etc).

### **Key Witnesses**

The Presenting Officer should decide whether to call any key witnesses or rely upon their witness statements. A major consideration will be the strength and value of a witness' evidence. Consideration should also be given to the welfare of a particular witness – and whether it would be too traumatic for the witness to appear in person. Duty of care is an extremely important issue.

Witnesses will not be called upon to appear in person on every occasion. Each case is different and it may be sufficient to rely upon the witness statements provided.

The employee may request the attendance of a management witness. Both sides have the opportunity prior to the hearing to request the attendance of a particular witness.

### **Asking and Answering Questions**

The Presenting Officer will have the opportunity to ask questions of the employee, their representative and any witnesses called by the employee.

The employee or representative will also have the opportunity to ask questions of the Presenting Officer who should maintain a professional attitude, providing answers supported by fact. The Presenting Officer should never be drawn into speculating or giving an opinion and may be asked to justify why a particular decision was taken during the course of the investigation. This is why keeping a 'decision log' is very important.

## **Guidance for managers**

# **Keeping a Decision Log**

## What is a Decision Log?

A decision log is a record of key decisions that affect the course of an investigation and the reasons for those decisions.

At any stage during an investigation, or during a disciplinary hearing or employment tribunal, the investigating officer may be asked to justify any decisions made during the

course of his or her investigation. Memories often fade with time, and the decision log is an essential tool in any investigation.

#### What to Record?

The decision log is not intended to capture every decision made during an investigation. Key decisions are the decisions taken in the management of an investigation that materially affect its course.

Examples of key decisions may be:

- a decision to record or not to record a statement from a particular witness
- a decision not to recover a particular document or piece of evidence
- liaison with a trade union or other representative body in relation to a particular issue.

Entries in the log should be made as soon as possible after making the decision, and all decisions should be timed and dated.

The decision log should enable someone who is not directly involved in the conduct of the inestigation to understand the thought processes of the Investigating Officer and the reasons for the course of the investigation. This is important for defending any challenges made against decisions, and for any subsequent reviews of the investigation.

(See 'Decision Log' Template at Appendix 2)

#### **Liaison Officer**

If necessary, a Liaison Officer may be appointed to act as a contact point between the organisation and the individual who is the subject of a complaint or allegation.

The Liaison Officer should be provided with:

- The name and contact details of the investigating officer
- The name and contact details of the Trade Union representative dealing with the case (where applicable)

- The name and contact details of the Occupational Health Advisor dealing with the case (where applicable)
- A copy of any relevant policy.

#### **General Points:**

- The liaison officer should be a neutral party
- In consultation with the individual, determine the level and method of contact to be maintained
- The liaison officer may make enquiries on behalf of the individual, or direct the individual accordingly
- If the liaison officer becomes aware of a health issue relating to the individual, it may be appropriate to contact Occupational Health to advise them of any concerns.

### **Ground Rules for Meetings**

In order to ensure that all attending the meeting are given a fair chance to state their case, the following rules should be adhered to by all present.

- All parties should exercise self control throughout the meeting
- All parties should listen to what the others are saying. Do not interrupt someone
  while they are talking. If you think of something you want to say, make a note of it.
- All parties should behave in a non-threatening manner. Some examples of threatening behaviour are: Shouting or raising their voice; pointing or raising their hand/fist; Leaning across the table. It is up to the chair of the meeting to determine when someone is behaving in a threatening manner.
- All parties should remain seated throughout the meeting and treat others with respect

If the above rules are not adhered to the offending party should be asked to leave and continue the meeting in their absence.

### **Dealing with Stress**

In any investigation there is a duty of care towards all employees.

Interviews can sometimes prove very stressful for employees and it important to establish a good rapport from the outset. The Investigating Officer should be aware of signs of stress throughout the interview, such as the inability to keep still or excessive sweating.

If it appears that the employee is becoming stressed the Investigating Officer should suggest a break. Witnesses very often need reassurance and support during the interview process.

### What if a Witness refuses to Participate?

There is an expectation for all Denbighshire County Council employees to cooperate throughout any investigation, and to provide honest answers to all questions put to them.

The Council understands that it may be difficult and distressing for some employees to go through the interview process due to their own experiences, and that some may be reluctant to cooperate for fear of reprisals. Victimisation of any individual for raising genuine concerns will not be tolerated.

If a witness refuses to participate or attend a meeting, it is important that the Investigating Officer meets with the witness to find out their reasons. There is a need to provide reassurance and support, and it is important that the Trade Union or other representative is involved in this process.

If, having previously agreed, a witness fails to attend the meeting, a further date should be arranged. However, in some cases it may be possible to continue with the investigation even if the witness refuses to make a formal statement.

#### **Disclosure**

Disclosure has two main purposes:

 to give the witness or the subject of the investigation an opportunity to give an account

to test the truthfulness or accuracy of their account

It is for the Investigating Officer to decide what disclosure is provided and at what stage of the interviewing process.

It will always be necessary to provide some kind of disclosure, either before, or during the interview, or both. Any disclosure should be recorded on the Interview Plan (See Interview Plan Template at Appendix 4).

In relation to a witness, disclosure will be fairly limited and will probably be restricted to details the investigator believes the witness may be able to assist with. Verbal disclosure may be all that is required, or it may involve the showing of a particular document or an extract from a statement.

In relation to the subject of the investigation, more comprehensive disclosure will be necessary. It may be necessary to disclose various documents and statements or extracts. Too little disclosure may prevent the employee providing a reasonable account, whilst too much may prevent the investigator testing the reliability of the employee's account.

In relation to the subject of the investigation, and depending on the amount of disclosure, it may be beneficial for the investigator to provide the disclosure prior to the interview date.

# Interview Recording

Where possible, it is preferable to obtain a statement from a witness, rather than complete a record of interview. It is a flowing account of the evidence a witness will provide.

However, it is more appropriate to complete a record of interview when interviewing the subject of the investigation as this enables the investigator to put specific questions to the employee.

A record of interview differs from a witness statement in that it is a record of the questions and answers of a meeting between the investigating officer and witness or subject. It is essential that the notes are accurate and are recorded in detail at the time of the interview. For this purpose it may be useful to have a clerk available to support the investigating officer and take notes.

The notes should be signed and dated by all those present and typed copies should be prepared within 5 days of the interview and distributed to all participants. (See 'Record of Interview' Template at Appendix 5/6)

### **Drafting the Witness Statement**

In most cases the Investigating Officer will prepare a typed witness statement from the notes recorded during the interview. However, in some cases the investigator may decide to obtain a handwritten statement from the witness at the time of the meeting which should be properly signed and dated.

The following points should apply:

- the statement should record the facts as stated during the interview, written where possible in the language used by the witness
- where there is any ambiguity or gap in the account provided by the witness, then the witness should be asked for clarification
- the investigator should not put his or her own interpretation on the statement
- in signing the statement, the witness is confirming that he or she believes it to be a true and accurate account
- a witness should not be pressurised into signing a statement if he or she is unhappy with it. It may be that the witness may ask for modifications to be made to the statement before signing it
- where a witness has been reluctant to participate in the investigation, he / she may
  also refuse to sign the statement. In such circumstances, the investigating officer
  should make it clear within the final report that the statement is unsigned and is
  therefore not validated

(See 'Witness Statement Templates' at Appendix 6)

#### **General Advice**

Not every investigation is the same. Some will be relatively straight forward, and others may be fairly complex. However, the guidance can be applied to any investigation. Keep a focused and balanced approach when conducting investigations.

General advice and support is available from Human Resources.

### The Interview Model

#### **PEACE Model**

PEACE' is an excellent interview model, which consists of a series of operations. 'PEACE' stands for:

- P Preparation and planning
- E Engage and explain
- A Account
- C Closure
- E Evaluate

### P - Preparation and Planning

The investigating officer should prepare an interview plan, identifying specific areas requiring investigation, points to prove the allegation(s), possible defences etc. It is essential that before starting an interview, investigating officers remind themselves of the main elements of the allegation(s). This will enable the investigator to be clear when framing questions and directing the course of the interview. Investigators should have access to a brief reminder of the main elements of the allegation(s).

Crucial elements of good planning and preparation for an interview include:

- understanding the purpose of the interview
- defining the aims and objectives of the interview
- understanding and recognising the points to prove
- assessing what evidence is available and from where it can be obtained
- assessing what evidence is needed and how it can be obtained
- preparing the mechanics of the interview (stationary, exhibits, location etc).

### E - Engage and Explain

These two terms are also known as 'Interview Preamble'.

The essential element of engagement is an introduction appropriate to the circumstances of the interview. It is desirable that a proper relationship is formed between the interviewer and interviewee. This requires, for example, that the investigator develops an awareness of, and is able to respond to, the welfare needs of the interviewee and particular fears and expectations.

The engage phase is followed by the explanation phase in which the investigator should outline the reasons for the interview and explain what kinds of action will be followed during the interview, particularly the routines.

In essence, this phase of the interview sets the agenda for the rest of the interview. Remember the following:

- briefly explain the type of investigation (disciplinary etc), and the purpose of the interview – which is to obtain information pertinent to the current investigation
- a witness does not need to know all the details / allegation(s) facing the subject
  of an investigation, just the area the investigating officer believes the witness may
  be able to assist with
- clarify the role of all parties present including the note taker (if using one), and if
  accompanied, the role of the 'supporter' (e.g. colleague, TU Representative) to act
  as silent support and not take part in the interview
- state that notes will be taken using the 'Record of Interview' form (See 'Record of Interview' Template at Appendix 5), which all parties will be asked to read and sign
- explain to interviewees that although the evidence they provide may be used within
  the final report, their statements will not be released unless the matter is to be
  considered at a disciplinary hearing (i.e. an internal discipline meeting chaired by a
  Deciding Officer from the council, or an employment tribunal). It should also be made
  clear that the final report is confidential, but will receive wider distribution if a hearing
  is necessary

- explain that occasionally the Council receives a Data Protection Subject Access
  Request which it must respond to by law. In the circumstances each individual will
  be asked whether or not they give consent for the interview statement to be
  released. There is no expectation for the witness to allow the release of the statement
  and they do not need to provide decisions for their decision. The decision is a
  personal one
- inform the interviewee of the need for confidentiality and the possible consequences should a breach occur
- if the individual is not accompanied, ensure that he / she is happy to continue on their own (particularly relevant if you are interviewing the main subject of the investigation)
- make it clear that it is fine to request comfort breaks, or speak privately with their supporter
- interviews should not last more than 90 minutes without a break

#### A - Account

This term describes the stage in which the interviewee's recollection of the events of interest is obtained. This stage is directed at obtaining the fullest possible account from the interviewee. There are two accepted approaches of inducing recollection known as:

- the cognitive approach
- conversation management.

Different techniques for assisting recollection are associated with each method. With the cognitive method, the interviewee is asked to think back and mentally relive the event, initially with minimal interference from the interviewing officer. The investigator does not interrupt, makes effective use of pauses and avoids leading questions. The interviewee is then encouraged to recall the event again using a different chronological order, or from a different perspective.

When the conversation management method is used, the interviewee is asked first to say what happened, and the investigator then subdivides the account into a number of individual parts which are enquired about in turn for further details.

The cognitive method provides the interviewee with greater control over the way the interview develops, whereas conversation management attributes more council to the interviewer. This basic difference between the two approaches broadly defines when each is most appropriately used. For example, conversation management may be more appropriate for reluctant interviewees than the cognitive method.

The investigator should allow the interviewee to give his or her version without interruption.

Once an account has been provided, be prepared to challenge or probe particular issues. Do not simply accept answers on face value.

#### C - Closure

To avoid immediate or future problems with the relationship formed between the interviewer and interviewee, investigators should ensure that, at the end of an interview:

- interviewees are thanked before leaving
- everyone understands what happened during the interview
- everyone understands what will happen in the future.

Closure should also include elements such as giving the interviewee the opportunity to ask any questions.

It is crucial that the investigator always ensures that there is planned closure, rather than an impromptu end to the interview. The investigator should summarise and check back as to what the interviewee has said.

#### E – Evaluate

After each interview is completed, the information and any material which came from it should be fully evaluated. The first consideration is whether the objectives of the interview were achieved. Decisions must then be made about whether any further interview is required, or whether other enquiries need to be made (as corroboration, confirmation or preparation for further investigation). An important element of the evaluation is to put the interview in the context of the whole investigation, and to review the information obtained along with that already available. Consideration should be given to the following:

- the points to prove the allegation(s)
- evidence of a defence to the allegation(s)
- what other areas need to be addressed during the investigation.

Evaluation can also help managers to improve their interviewing skills. To this end, they should take the opportunity to reflect on their personal performance, and identify areas for future development or improvement.

At the conclusion of each interview, the investigating officer should have (as appropriate and relevant):

- the names of those involved that each witness is aware of
- date, time and place of alleged incident(s)
- details of what occurred and the order in which everything happened
- whether it was a one off incident or part of a series of incidents
- what impact the incident(s) has had on the complainant / victim, and on his / her ability to work
- how the complainant / victim and the employee whose conduct is under investigation reacted to any documents or witness evidence that was inconsistent with his / her account
- how the complainant / victim felt after the incident(s)
- what steps the complainant / victim had taken to resolve the situation:
- what the complainant / victim's preferred solution is
- the investigating officer should note his / her assessment of the demeanour of the
  parties involved, and of witnesses and their attitudes towards questions. Unease,
  difficulty with recall or hesitancy, may be indicators of a witness who is
  uncomfortable with the account he / she is providing.

## **Questioning Techniques**

Asking the right questions is at the heart of effective communications and information exchange. If you ask the wrong questions, you will probably get the wrong answer, or at least not quite what you are hoping for. If you ask the right questions, you have a much

better chance of gathering more information and achieving the purpose of the interview. Being focused and knowing what questions to ask will also save you a considerable amount of time.

### **Open and Closed Questions**

A closed question usually receives a single word or very short, factual answer.

Open questions (Who? What? Where? When? Why?) are helpful in getting the interviewee to provide full answers. An open question asks the interviewee for his or her knowledge, opinion or feelings. 'Tell me' and 'describe' can also be used in the same way as open questions. Here are some examples:

- What happened at the meeting?
- Why did he react that way?
- Tell me what happened next?
- Describe the circumstances in more detail?
- How did it make you feel? Open questions are good for:
- finding out more detail
- developing an open conversation
- finding out the interviewee's opinion or issues. Closed questions are good for:
- testing your understanding and seeking clarity
- concluding a discussion.
- Funnel Questions

This technique involves starting with general questions, and then homing in on a point in each answer, asking more and more detail at each level. This technique is often used by investigators taking a statement from a witness:

- 'How many people were present when this took place?'
- 'About six'
- 'Were they male or female?'
- 'I think they were all male apart from one female'
- What sort of ages were they?'

- 'They were all about the same age in their twenties I think'
- Which department were they from?'
- 'Not sure.' Printing' I think'
- What makes you think they were from 'Printing'?
- 'Not sure really. Just something in my mind'
- Were any of them wearing anything distinctive?'
- 'Yes, several of them had white polo shirts on'
- 'Can you remember if there was a logo on the polo shirts'
- 'Now you come to mention it, yes, I remember seeing 'Printing Dept' in small letters on the front of their shirts'

Using this technique, the investigator has helped the witness re-live the scene and gradually focus on a useful detail. It is unlikely that this information would have been obtained by simply asking an open question such as 'Are there any details you can give me about what you saw?'

When using funnel questioning, start with closed questions. As you progress, start using more open questions. Funnel questions are good for:

- finding out more detail about a specific point
- gaining the interest or increasing the confidence of the person you are interviewing.

### **Probing Questions**

Asking probing questions is another strategy for finding out more detail. Sometimes it is as simple as asking the interviewee for an example to help you understand a statement they have made. At other times, you need additional information for clarification, or to investigate whether there is proof for what has been said.

Probing questions are good for:

- gaining clarification to ensure you have the whole story and that you understand it thoroughly, and
- drawing information out of people who are trying to tell you something.

### **Leading Questions**

Leading questions must be avoided so that the investigator does not influence accounts. For example:

- Would you describe (name) as aggressive or sarcastic?'
- 'You did everything you could to be supportive did you?'

### **Using Questioning Techniques**

You have probably used all of these questioning techniques before in your everyday life, at work and at home. But by consciously applying the appropriate kind of questioning, you can gain the information or outcome that you want even more effectively.

Make sure that you give the person you are questioning enough time to respond. This may need to include thinking time before they answer. Do not just interpret a pause as a 'No Comment' and move on.

Skilful questioning needs to be matched by careful listening so that you understand what interviewees really mean with their answers. Your body language and tone of voice can also play a part in the answers you get when you ask questions.