# Managing Investigations

# PACT HR

## Bradford Central PRU
## Guidance for Staff

October 2011

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| Policy agreed by Staff on: | 1 December 2015 |
| Ratified by full Management Committee: | 1 December 2015 |
| Review Date: | Autumn 2018 |
| Agreed Frequency of Review: | 3 yearly |
| Allocated Group / Person to Review: | MC can delegate to committee or individual member or HT |
| Signed by Chair: | |
| Signed by Headteacher: | |

City of Bradford MDC
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# Contents

# 1. Introduction

The Managing Investigations Toolkit aims to provide a framework which may assist PRU Managers to carry out a fair and consistent investigation into staff conduct or complaints. This document offers best practice guidance to PRU management and Management Committee on dealing with the practicalities of carrying out investigations.

The guidance contained within this document should be used in accordance with the relevant PRU policy or procedure, as determined by the nature of the issue under investigation.

This guidance should be used in conjunction with the following policies;

- Disciplinary Procedure for Staff Employed in PRUs
- Complaints & Grievance Procedures for PRUs

This document is a practical guide to PRUs on undertaking investigations. Managers are strongly advised to contact Human Resources prior to undertaking an investigation; Human Resources are available to advise the investigating officer (Headteacher, Head of Centre or Management Committee) at all stages of the process.

**When should an investigation be conducted?**

An investigation may be required in the following circumstances;

- Allegations of misconduct (including child protection allegations)
- Allegations of bullying / harassment / discrimination
- Dealing with employee complaints e.g. complaints regarding perceived unfair treatment

If there is an occasion when an employee's conduct has the potential to lead to a disciplinary hearing it is most important that a full and fair investigation is undertaken that is consistent with the guidance that is provided within this document.

**Examples of Misconduct**

The following are examples of misconduct. The list is not exhaustive:

- Unauthorised absence
- Negligence
- Inadequate standards of work caused by carelessness
- Careless damage to or wastage of PRU property and/or equipment
- Failure to carry out reasonable instructions
- Insubordination
- Improper behaviour or conduct

- Disregard of safety instructions
- Aggressive behaviour
- Timekeeping offences
- Improper disclosure of confidential information
- Smoking in prohibited areas
- Harassment and/or bullying
- Breach of the PRU's guidelines on e-mail/internet use
- Breach of the PRU's approach to equality
- Conduct which contravenes PRU policy or procedure

**Examples of Gross Misconduct**

Gross Misconduct is generally seen as misconduct serious enough to destroy the employment relationship between the employer and the employee and make any further trust and confidence and future working relationships impossible.

The following list provides some examples of actions which may constitute gross misconduct:

- Theft of PRU, staff or public property
- Fraud and/or deliberate falsification of records
- Deliberate damage to or neglect of PRU property and/or equipment
- Gross insubordination
- Serious harassment, bullying, discrimination and/or intimidation
- Physical violence
- Actions which risks bringing the PRU into disrepute
- Incapability whilst on duty brought on by alcohol or drugs
- Conduct at work likely to offend decency, including improper relationship with students
- Gross negligence which causes or might cause unacceptable loss, damage or injury
- Serious infringement of health and safety procedures
- Serious breach of confidence e.g. disclosure of confidential information and breach of data protection requirements.
- Criminal activities outside work where such conduct is incompatible with the individual's employment
- Matters/conduct relating to child protection
- Sexual Misconduct
- Refusal to follow a reasonable instruction

**When to consider informal or formal action**

Consideration should always be given to whether it is appropriate to deal with a matter formally or informally (and the process to be followed).

If you are concerned that the allegation may be serious or you are uncertain as to whether initially to tackle the matter informally or formally, you are strongly advised to contact Human Resources before any action is taken to decide the most appropriate method of dealing with the matter.

Human Resources will discuss options with the manager, potential outcomes and mechanisms for dealing with the matter. Human Resources will also suggest any other sources of advice and support .The decision on how to proceed will ultimately rest with PRU management.

For guidance on dealing with complaints and allegations informally, please refer to the appropriate PRU Procedure.

**NB. If the matter relates to Child Protection the Behaviour Support Service Manager must be contacted for advice before any action is taken.**

**Child Protection Allegations**

In the event of an allegation of a child protection nature a basic fact finding exercise may be required to establish the initial details, however, it is most important that you contact Human Resources as well as one of the colleagues below, before commencing a full investigation.

Jennie Sadowskyj – Behaviour Support Service Manager
01274 385617 – 07730544800
jennie.sadowskyjj@bradford.gov.uk

## 2. Suspension

**Who can suspend / lift suspension?**

In cases where suspension is considered, please contact Human Resources for advice.

Headteachers

- Head teachers can suspend any member of staff employed or engaged at the PRU
- If suspension occurs, the Management Committee must be immediately informed
- Head teachers do not have the power to lift suspensions**,** this must be done by the Management Committee

Management Committee

- The Management Committee can suspend / or lift the suspension of any member of staff employed or engaged at the PRU, including the Headteacher
- If suspension occurs, the Management Committee must inform the Headteacher (in these circumstances this function would either be carried out by the Chair of Management Committee or a delegated member). Suspension should not be discussed at full Management Committee level, in order to avoid the impartiality of Management Committee that may be required to consider matters at a later stage

**When suspension may be appropriate**

Suspension is a neutral act, not a disciplinary sanction and the employee will receive normal pay.  However, suspension may be considered at any stage of the process.

Suspension may be appropriate in the following circumstances;

- When a child(ren) is/are at risk
- Where the allegation is so serious that dismissal for gross misconduct is possible
- Where suspension is necessary to allow the conduct of the investigation to proceed unimpeded
- Where the Police are involved in a criminal investigation or are likely to be

Where the police are involved, management must consult with the Police Officer in charge prior to suspension being considered. In these circumstances please contact Human Resources.

## Alternatives to Suspension

Suspension can in some cases be a traumatic experience for all parties involved.
The member of staff, whom the allegation is against, should not automatically be suspended and alternatives to suspension can be considered, these may include;

- Paid leave of absence or Mutual agreement to refrain from work (known as Garden Leave). This should only be considered as a short term arrangement while further information is being gathered.
- Alternative duties/locations
- Removal from contact with child(ren) that may be involved in the investigation

In the case where issues relate to a child protection matter, please consult with the appropriate Child Protection Officer, prior to making a decision regarding suspension.

In the case where immediate referral to the Behaviour Support Service Manager is accompanied by consideration of disciplinary procedures, suspension may or may not be appropriate. The Headteacher or Chair of Management Committee should consult with the Behaviour Support Service Manager and consider any recommendation which may be made by the child protection agency/Police or strategy meeting before a decision to suspend is taken.

## Process for suspension

<u>Meet the member of staff</u>

- A meeting with the member of staff should normally be undertaken outside pupil contact time[1] and as soon as possible in a discreet location.
- Where suspension is being considered, the employee should be advised that they may seek advice from his or her trade union representative
- The employee may be accompanied by a work colleague not involved in the matter or a trade union representative. Where a trade union representative is not available to attend the meeting, the member of staff may be suspended and then given the opportunity to make representations while accompanied by their trade union representative at a later date.
- The Headteacher / Management Committee conducting the meeting, will in most cases, be accompanied by a member of Human Resources

[1] In accordance with the relevant ACAS Code of Practice, where the person is a trade union or safety representative, the interview should not be arranged without prior discussion with the relevant branch secretary or a full-time official of the trade union concerned. From the outset it should be established that the action being taken is not an attack on the functions of a trade union.

At the meeting

- The member of staff should be informed that at the conclusion of the meeting, they may be suspended
- Explain that the meeting is not a formal disciplinary hearing but is for the purpose of raising a serious matter which may lead to suspension and further investigation
- The member of staff should be given information regarding the allegation(s) and the reasons for any proposed suspension
- The employee may make representations regarding the consideration of suspension
- Management may also want to give consideration to alternatives to suspension
- A brief adjournment should be offered to the member of staff prior to management's response
- If suspension is considered necessary, the individual should be advised that he or she is suspended from duty with immediate effect and should also be informed of the reasons for and the terms of their suspension
- Advise the employee that access to ICT systems & other relevant equipment will be immediately removed for the duration of the suspension
- Written confirmation of the suspension may be given at the end of the meeting or otherwise provided as soon as possible (normally within one working day, see Appendix 1)

In cases where suspension occurs, contact with the employee should be maintained and the suspension reviewed monthly.

**Support for Staff during the Period of Suspension**

According to the needs and wishes of the member of staff to be kept informed, an appropriate senior member of staff may provide information about developments in the life of the PRU. The suspended member of staff will also be given the name of a Human Resources Representative as a contact. The role of the contact person is to provide information with regards to the progress of the investigation.

Social contact with colleagues and friends at the PRU should not be precluded except where it is likely to be prejudicial to child protection enquiries, criminal investigations or disciplinary processes.

In some cases, it may be appropriate to ask whether welfare counselling or the support of the Employee Health & Wellbeing Unit (or the PRUs Occupational Health provider), would be helpful, or to respond to a request for such further support.

**Confidentiality**

Where a parent has made the allegation they may be confidentially informed of the suspension and any developments where it is necessary to provide reassurance. The reasons given should be agreed between the concerned employee, their representation and the Headteacher.

Senior members of staff in the PRU who need to know of the reason for the suspension should be informed as far as is necessary. The Headteacher/Chair of Management Committee should take a decision on informing other staff colleagues in the PRU of the suspension, however, the number of people informed of the suspension should be kept to a minimum.

In certain circumstances, e.g. child protection investigations, it may be necessary for the Head teacher (in consultation with the Chair of Management Committee) to provide immediate reassurance to parents and children in the PRU and there may be a need for information to continue to be provided during the course of an investigation to parents, children and other colleagues.

**Guidance should be sought from the Lead Officer for Child Protection or, where relevant and appropriate, from Social Services or the Police.**

# 3. The Investigation

### Who Should Investigate?

- When it is decided that a formal investigation is appropriate PRU management or Management Committee should determine who will be the investigating officer. If it is likely that the investigation may result in a disciplinary or grievance hearing, where the Headteacher may hear the case, It is advisable that an alternative member of the senior leadership team or an external investigator is commissioned in order to conduct the investigation
- If it is likely that the investigation may result in a disciplinary or grievance hearing, where the Management Committee may hear the case, it is advisable that the Head teacher, an alternative member of the senior leadership team or an external investigator is commissioned in order to conduct the investigation.
- If a hearing is required and there is no alternative the Headteacher can investigate and present the case to themselves at a hearing. Whilst it is not recommended that the Head teacher undertake this dual role, this would be a pragmatic approach in the circumstances. Please contact Human Resources before making a decision.
- If the Headteacher or senior member of staff is a key witness, or has knowledge which could be seen to prejudice the investigation, it is not recommended that they conduct the investigation, present the case at a hearing or hear the case. (Please contact Human Resources for further advice).

### External Investigators

The PRU may also contact Human Resources with a view to commissioning an external investigator. If an external investigator is commissioned, he/she will report to the nominated member/s that will retain responsibility for the case. This is outside the agreed SLA's and will be at an additional cost to the PRU.

The Investigator should liaise with the Human Resources for advice on procedural matters and to keep the Human Resources apprised of developments in the case.

The final report shall be the joint property of Bradford MDC and the Management Committee of the PRU. (Please see appendix 3 for the protocol for external investigators)

## How to conduct the Investigation

Principles of conducting an investigation

- The investigation should be free from bias and meet the requirements of natural justice. All concerns should be put to the employee and they should be allowed to respond
- At all stages of the process, confidentiality must be maintained by all parties
- A timescale should be provided at the beginning of the investigation to all parties concerned and every effort should be made to achieve this. However, if this is not possible, all parties should be informed and given reasons why
- All parties have the right to be accompanied by a trade union representative or work colleague not involved in the case throughout the investigation process

Meet the Member of Staff

The investigating officer will meet the member of staff whom the allegation/complaint is against (with their Trade Union Representative or a work colleague should they wish) and explain that this is a formal investigation. The member of staff will be given information about the allegation/complaint (verbally and in writing) and the procedure to be followed will be explained. The information to be given in sufficient detail for the member of staff to understand the overall matter of concern.

Before commencing the investigation

- Identify details of the precise issue to be investigated, e.g. details of allegations/complaint made etc.
- Suggested methodology for conducting investigations, e.g. identification of initial witnesses, copies of policy being breached etc.
- Under which PRU policy or procedure the investigation is being conducted under
- Clarify what purpose and by whom any Investigation Report will be used.

## Investigation Interviews

Preparation for the investigation interviews

The Investigating Officer should:

- Ensure that enough time has been set aside to hold the interview confidentially, in a private room that is available without any interruptions.
- Ensure that all necessary information is available during the course of the meeting. e.g. copies of policies / procedures etc.
- Prepare a list or structure of challenging questions in relation to the alleged incident / allegation

- Ensure that an appropriate person is available to take detailed notes of the meeting, for use within the investigation process / report where appropriate.

All staff interviewed as part of the investigation are entitled to be accompanied by a trade union representative or a work colleague (who is not involved in the matter). The employee should be written to stating the date/time and venue, the purpose of the meeting and the right to be accompanied.

Conducting the Investigation Interviews

Where possible the interviews should be conducted in the following suggested order;

- The person raising the allegation/complaint should be interviewed first
- Witnesses should be interviewed one at a time. There may be a need to re-interview witnesses during the investigation process. Additional witnesses may be identified during the investigation and must also be interviewed.
- The person whom the allegation/complaint is against should be interviewed last
- Care should be taken to avoid any opportunity for collusion

***When interviewing children that may be involved as witnesses please refer to Human Resources for advice.***

The structure of the investigation interview

- Explain the context of the interview and the member of staff's right to representation.
- For what purpose the meeting notes and subsequent record of interviews will be used
- How and when the interviewee will be able to check the notes /record of interviews
- Reiterate the importance of confidentiality.

The interview itself is to ascertain facts and there may be times when a series of specific questions requiring specific answers may need to be put to interviewees. Fair, open and challenging questions may be used to probe answers to establish the facts. The interviewer should avoid any speculation or opinion.

**Introductions & Greetings**

**To the person making the allegation, witnesses (or others with information) explain;**

- The procedure to the interviewee and try to put them at their ease.
- Their right to be accompanied by a trade union representative
- This is part of a formal process, their evidence may be used if the matter proceeds to a hearing and they may have to be called as a witness

- They will be given a copy of their final record of interview
- The member of staff will have the right to know who is making the allegation/complaint (or providing information about the matter).The member of staff will also receive a copy of the record of interview should the matter proceed to a hearing
- This matter is strictly confidential and must not be discussed at any stage. Reassure the interviewee that management will also strictly maintain confidentiality.
- This should appear in the record of interview

<u>Taking a record of interview from the member of staff</u>

Explain that:

- This is part of a formal process
- They have a right to representation
- The allegations/complaint against them may proceed to a disciplinary hearing, and the potential outcomes.
- They will be given a copy of their final record of interview

<u>Questioning</u>

- Use open questions (who, what, why, when, how etc)
- Use closed questions in order to clarify points. Leading questions should not be used when interviewing witnesses
- Discuss and enquire into any additional information for clarification
- Ensure that specific examples are provided when unsubstantiated descriptions are given, i.e. ‘bullying’ or inappropriate behaviour’ etc
- Where physical force is alleged to have been used then the degree of force used should be clarified
- Once questioning is complete, re-cap and clarify main points of discussion, ensuring that the notes taken are accurate and answer any appropriate questions or concerns raised

**<u>Closing Statement</u>**

- Explain the next steps, confirming how / when the record of interview is to be prepared and verified and when the investigation is expected to be completed.
- Ensure that contact details of the Investigating Officer are provided, and ensure confidentiality is fully understood.

At the end of the investigation interview the Investigating Officer should have obtained from each witness:

- The names of those present or involved
- Date / time / place of the alleged incident / allegation
- Details of what took place, and the order in which they happened
- How the individual reacts to any other documents or witness evidence which is inconsistent with their account
- The steps taken since the alleged incident / allegation, including any steps taken to resolve the matter
- Their preferred outcome (in cases of complaint)

**Records of Interviews**

- Any notes taken during the investigation interviews should be typed, checked and signed by the interviewee. The record of interview should record the facts, written (within reason) in the language used by the interviewee following the train of events. (For a template record of interview please see Appendix 6)
- If there is any ambiguity or gap in the account these should be clarified with the interviewee
- The interviewee must be given the opportunity to review the statement and must only sign to confirm it as a true and accurate version of events
- Once the record of interview is typed the employee should be allowed sufficient time to read it through, make any amendments/additions as necessary and sign and date the record at the bottom of each page. Any amendments should be initialled. Where possible it is advised that the record is typed and signed as soon as the interview has been completed.
- Where records of interviews cannot be taken the Investigating officer may ask the interviewee to provide a written statement which can be prepared with their Trade Union representative. In these cases the statement should be checked by the Investigating officer and included in the Investigation Report. In these circumstances please contact Human Resources

**Evaluating the Evidence**

All of the relevant evidence gathered during the investigation should be reviewed and collated for use within the Investigation Report (For a template investigation report, please see appendix 7). This should include;

- Any record of interviews
- Notes from investigation interviews
- Relevant policies & procedures
- Evidence of custom and practice etc.

This evidence should be evaluated, particularly where there are contradictions or conflicts which the Investigating Officer must consider. In evaluating evidence, each case should be judged on its merits; however, the following points should be considered;

- Direct witness evidence will usually be stronger than indirect information relating to the incident / allegation
- Evidence which is inconsistent with documents produced at the time is questionable

- Evidence which is vague, is unsubstantiated opinion or hearsay, omits significant details or contains inherent contradictions is questionable
- Anonymous evidence should be reviewed with caution as it is often difficult to substantiate
- Consideration should be given to any bias, motivation or influence individual witnesses may have
- Where possible the factual accuracy of points raised in records of interviews should be verified by the investigating officer if they are material to the allegations/complaints

It is important to remember that in reviewing the evidence and recommending appropriate courses of action, the Investigating Officer only has to show they have a **reasonable belief** of what happened based on their assessment of the evidence. Unlike a legal case there is no requirement to prove a case ‘beyond reasonable doubt’.