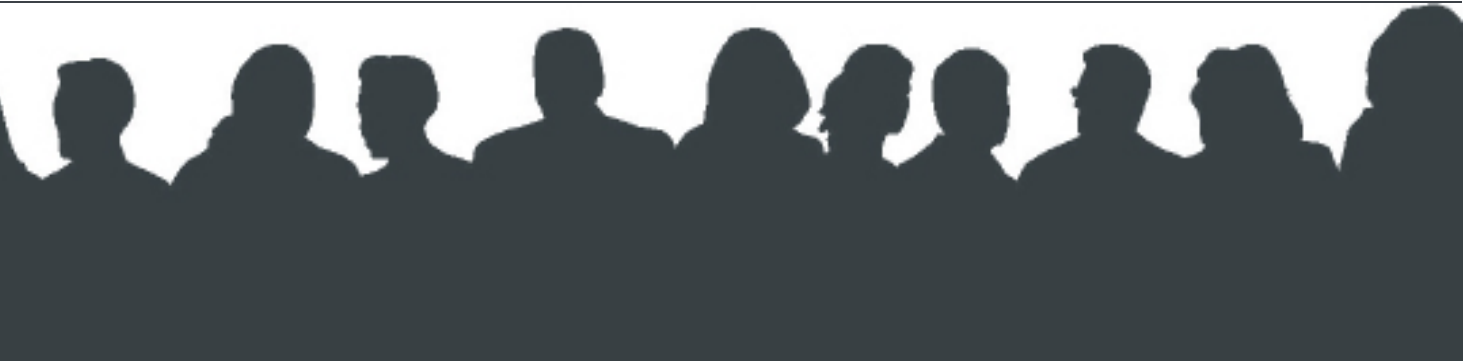




**people policies**

# Code of Conduct for Investigations





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# Policy

## Purpose of the policy

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The Code of Conduct for Investigations exists to provide a framework to use whilst gathering information and establishing the facts of the case when conducting an investigation. This can be used in conjunction with other policies such as:

- Disciplinary policy
- Grievance policy

**Note:** Where investigations arise from whistleblowing, reference should be made to the Public Interest Disclosure Act 1998 and to the Code of Conduct for Employees.

- Some other substantial reason for dismissal (SOSR)
- Formal management investigations arising where managers request an issue to be investigated where that issue does not fall within one of the recognised policies.

## Principles behind the policy are

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- To progress investigations promptly, fairly, impartially and thoroughly.
- To ensure that appropriate confidentiality is maintained at all stages of the investigation.
- The commissioning officer will define the terms of reference for the investigation.
- Regular contact will be maintained between the panel and the commissioning officer.

## Employee's responsibilities

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- Submit a written statement raising their concerns (if they are the complainant) detailing the nature of their complaint.
- Attend an investigation meeting/s with the investigating officers when requested to do so.
- Co-operate with the investigating officers by fully answering questions that are asked during the interview.
- Refrain from discussing the case under investigation with anyone other than the investigating officers and their representative.
- Maintain confidentiality at all times.
- Work with the investigating officers to meet the scheduled time scales of the process.
- An employee may be accompanied by a trade union representative or a work colleague, and it is their responsibility to arrange this. If the employee's chosen trade union representative is not available the employee should request from the trade union that an alternative trade union representative be provided.

## Manager's responsibilities

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- Line managers are responsible for the application of this policy.
- Investigations are commissioned by the appropriate manager, referred to as the commissioning officer who will allocate it to an investigating officer. Confidentiality must be maintained throughout by all involved in the case.
- The commissioning officer will define the terms of reference and time scales and there should be regular contact between the investigating officer and the commissioning officer so that the progress and scope of the investigation can be monitored.
- The commissioning officer must inform the person who is the subject of the investigation that an investigation will be taking place.
- The investigating officer must clearly identify the issues, consider the type of evidence required and document it in a systematic way.
- The investigating officer must pay particular attention to considering what information needs to be shared and the way in which this is done. Information must not be shared with people not involved in the investigation.  
**Note:** Confidentiality issues differ between whistleblowing and other investigations. Please refer to the Whistleblowing policy.
- Investigations should be dealt with promptly and thoroughly.
- The employee under investigation and any witnesses must be advised by the investigating officer of their right to be accompanied by a trade union representative or colleague at an investigation meeting.
- If the employee under investigation is a trade union representative the manager should inform the full time trade union officer (with the employee's consent) that an investigation will be taking place before commencing it.
- The manager is responsible for the application of this policy in their work area.

## Trade union representative's role

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- To provide support and advice to members.
- Work with all parties to facilitate a timely resolution.
- The representative may accompany the employee but may not answer questions on their behalf. They may however raise any procedural matters which arise or require clarification of the process and confer with the employee when necessary during the meeting.
- The person accompanying an employee should be allowed a reasonable amount of paid time off to do so. It should be noted that there is no duty on a fellow worker or trade union official to accept a request to accompany an employee.

## Complexity of investigations

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- In cases that are not complex it may simply require the manager to collate information/evidence into a report. This would apply in minor breaches of the Code of Conduct for Employees, and managers will be able to carry out the investigation and the disciplinary hearing, although the use of a note taker is advisable to ensure an accurate record of the meetings.
- In other cases, such as where allegations of serious misconduct have been made, a full investigation will need to be carried out by investigations officers/note taker or an investigation panel and it may not be appropriate for managers to undertake investigations in their own service areas or to both investigate and conduct a hearing, advice should be sought from the HR Advice Centre. An independent investigation should be carried out by managers from another service area or by the HR Investigations Service.

## Equalities and specialist areas

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- Where sensitive complaints of race, sex, religious belief, and age or disability discrimination/harassment are being investigated, the commissioning manager should consider gender and race balance amongst those undertaking the investigation. Employees can request that a black and minority ethnic (BME) representative is on the panel and this will be accommodated where possible.
- These matters will require investigation officers with specialist skill/knowledge such as those having legal, regulatory or policy responsibilities. In these cases the appropriate relevant investigative processes/requirements will take precedence over this policy. Specialist advisors may recommend specific action, but cannot recommend sanctions.
- Allegations regarding safeguarding require the manager to seek advice from the designated senior manager in the directorate.
- In cases of significant legal issues advice must be taken from the Solicitor (Employment).
- In cases of discrimination or harassment seek advice from the Service Manager: Change & Performance.
- Where adverse information has been received following a DBS 7 check, discuss with HR.
- In cases involving suspected financial irregularities, contact the Chief Internal Auditor. Such investigations will be carried out by Internal Audit from the start.

Note: External investigators may conduct investigations at the discretion and under delegated powers, of the Head of Paid Service or by the Service Director, HR; or a relevant Strategic Director. This would normally only be considered when the subject of the investigation is a 1<sup>st</sup> or 2<sup>nd</sup> tier senior officer or where there are substantial operational issues that prevent an investigation being conducted by council staff.

## Progress of an investigation

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- A chronology should be kept by the investigating officer so that it can be shown that efforts have been made to progress the issue. A chronology should form part of the council's submission, if the case is subject to an appeal.
- Due to the nature of concerns raised using the Whistleblowing policy, it may not always be possible for the council to indicate how it proposes to deal with the matters raised and the time scales involved. However, the council undertakes to inform employees who wish to know of the progress and outcome of an investigation under this procedure (where this will not compromise the process).
- The Disciplinary policy imposes additional requirements where employees are suspended as a precautionary measure. It is the responsibility of the commissioning officer to ensure relevant parties are informed of progress at reasonable intervals, although they may ask the investigating officers to do this. Where delays arise, progress letters should be sent by the manager to all parties (i.e. the complainant, alleged perpetrator, witnesses) to update them on progress.
- In some grievance investigations it may become evident early on that it is more appropriate to pursue the matter as a disciplinary investigation. The investigating officer/s should report this to the commissioning manager who will discuss the case with HR. It may be appropriate for the commissioning manager to separate out grievance and disciplinary related issues. In these cases, it will be necessary for the investigating officer/s to provide a summary of the facts with two separate findings in relation to the grievance and disciplinary issues - this way we can ensure that only appropriate and relevant information is shared with each party and there is no breach of confidence. Further guidance is available from the HR Advice Centre.

## Anonymous reports/unsigned statements

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- Occasionally managers may receive anonymous information concerning their staff, these should be treated with caution. Anonymous information may lead to an investigation, which reveals facts on which further action can be based. Anyone against whom an anonymous allegation is made should normally be informed that a complaint has been received and be invited to comment. The final outcome of any discussion or investigation should be recorded.

## Police inquiries

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- If a police investigation is taking place it does not necessarily mean that the investigation and subsequent hearing cannot take place until the police investigation is over. HR and Audit advice may be needed on the best way forward as it is important that nothing happens in an internal investigation, which might prejudice a police inquiry.

## Non-council employees and members of the public

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- There may be some cases where this code of conduct policy applies to individuals who undertake work for the council but are not employees, (in cases of this type advice should be sought from HR. )
- Complaints made by members of the public would normally be dealt with under the Corporate Complaints Procedure, however if the complaint concerns a conduct issue relating to an employee then this policy will apply. Members of the public should be advised that their complaint will need to be disclosed to the employee named in it in order to facilitate the investigation and their agreement should be confirmed. The same applies to their statement if they are interviewed.
- Likewise third party witnesses should also be advised that we will need to disclose the information they supply to the subject of the investigation and their agreement confirmed.
- Ex-employees are not covered by the provisions of the Code of Conduct for Employees in relation to the need to maintain confidentiality and may make disclosures that might bring the council into disrepute. Therefore, in certain circumstance, they may be asked to sign a Confidentiality Agreement so that the city council can ensure its duty of confidentiality for both employees and service users. This will be dealt with on a case-by-case basis and advice will be provided by the Data Protection Officer and the Corporate Legal team. Members of the public may also be asked to sign a confidentiality agreement where appropriate.



# Process

## The practicalities of conducting an investigation including how to hold the meeting

### Prior to the Investigation

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- 1 Investigation meetings should be held without unreasonable delay and employees must be advised of their right to be accompanied by a trade union representative or colleague.
- 2 Employees under investigation in relation to disciplinary issues (the alleged perpetrator/s) will be informed of the allegations against them, together with the supporting evidence, in advance of the meeting. Witnesses should receive a summary of the complaint and any extracts from the complaint where they (the witnesses) have been named. Employees under investigation in relation to grievances should receive a copy of the complaint in full. All investigation participants should be given information as appropriate before the investigation meeting.
- 3 The investigating officers will contact the participants to arrange and agree a date and venue giving them five days' notice of the meeting. If an employee requests that the meeting be postponed a new date should be arranged which is acceptable to all involved, provided the new date falls within five working days of the original date. If there is no agreed date available within five working days of the originally proposed date, it is for investigating officers to decide how to proceed.
- 4 If employees or witnesses are not available to participate in the investigation, the investigating officer must decide how best to proceed – this may mean proceeding with the investigation and obtaining written responses etc. HR advice may be sought.

- 5 The following should be noted:
  - All employees (complainant, alleged perpetrator, witness) have the right to be accompanied.
  - On no account should one-to-one interviews be carried out.
  - All interviews held (regardless of venue) are part of the formal procedure...
  - The letter inviting employees to interview should ask them to state any access needs.
- 6 Should an employee raise a grievance that is directly related to a disciplinary matter under investigation or about to be investigated then both the disciplinary and the grievance investigation may be treated as one and investigated simultaneously.

### At the start of an investigation meeting

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- 7 The following should be made clear to all those being interviewed during the investigation:
  - The object of the meeting is to gather facts and ask questions relating to allegations and record responses.
  - Reassurance will be given that no opinion has yet been reached as to whether the allegations are true or not true or as to the outcome of the investigation.
  - The employee being investigated should be advised of the possible outcomes.
  - Adjournments may be requested if an individual or the investigating officer feels that they need to adjourn the meeting for a short period.
  - All those interviewed will be sent a record of the meeting and asked to sign it as an accurate record.

- All those interviewed should be advised that their statement may be disclosed upon request to other individuals.
- They may be recalled to obtain further clarification.

## During the meeting

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- 8 The employee under investigation or the witnesses do not have the right to ask questions of the investigating officer, other than those relating to the investigation process itself.
- 9 Occasionally there may be a request that an investigation be taped. It is not the council's practice to allow this. The investigation is about ascertaining facts, not emulating a court of law, and it is not desirable to create an intimidating environment. Where taping is felt to be essential (such as to meet an employee's access needs), it should only take place with the prior agreement of both parties.

## Following an investigation

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- 10 An investigation report should be prepared by the investigating officers for the commissioning officer, using the standard format, this may include:
  - An introduction outlining the substance of the complaint/allegations
  - The names of the investigating panel and their role
  - Employees and witnesses, background papers that have been considered
  - The names and role of the people interviewed i.e. witness, complainant (statements will normally be included as appendices to the investigation report)
  - Any specialist advice sought/taken
  - Any explanation/circumstances offered in mitigation.

- Conclusions, based on the balance of probability (saying something is proven on a balance of probabilities means that it is more likely than not to have occurred) i.e. is there a case to answer?

11 The investigating officer will advise the commissioning officer either:

- That there is insufficient evidence to uphold the complaint/allegations

Or

- That the complaint/allegation has been found in part to be upheld

Or

- That the complaint/allegation is upheld.

**Note:** Investigating officers must not make recommendations as to appropriate sanctions or penalties as that is for a disciplining manager to decide should that be necessary.

12 The investigation report (with attached statements and other relevant documentation) should be sent to the commissioning manager to raise any queries or issues before it is sent to any other party. Statements requested by participants should not be circulated prior to completion of the investigation as it may prejudice the investigation.

13 Please refer to the disclosure table below for details on who is entitled to access to the documentation and what that access is.



# Disclosure of information

What can be disclosed and to whom?

## An investigation arising from an employee grievance complaint

Documentation	Complainant	Alleged perpetrator	Witnesses
The complaint	Yes	Yes	Summary of the complaint
The employee's statement	Yes	Yes	Yes
Other statements	If a request is made for access to the statements consideration will be given as to the disclosure of parts of the statement/s that contain their personal data	If a request is made for access to the statements consideration will be given as to the disclosure of parts of the statement/s that contain their personal data	If a request is made for access to the statements consideration will be given as to the disclosure of parts of the statement/s that contain their personal data
Investigation report	Yes	Yes	If a request is made for access to the statements consideration will be given as to the disclosure of parts of the statement/s that contain their personal data.

## Investigations re: Disciplinary/SOSR/Formal Management commissioned

Documentation	Alleged perpetrator /subject of management Investigation	Witnesses
The allegation	Yes	No access
The employee's/ subject's statement	Yes	Yes
Other statements	Access to all statements should be granted (upon request) except in exceptional circumstances whereby a statement may be edited/or access refused e.g. to protect the identity of vulnerable adults and children. In cases that lead to a disciplinary hearing, the employee has access to all documents.	If a request is made for access to the statements consideration will be given as to the disclosure of parts of the statement/s that contain their personal data.
Investigation report	Yes	If a request is made for access to the statements consideration will be given as to the disclosure of parts of the statement/s that contain their personal data.

Please note that different rules of confidentiality apply under the Whistleblowing policy.

Please seek advice from HR as needed.

# Additional guidance and support

This policy provides you with an overview of the purpose of the policy and the roles and responsibilities of those for whom it is intended. It also provides guidance in the Process section on the application of the policy. There are other documents which provide more detail and helpful guidance that should be read in conjunction with the policy and these are listed below.

## Additional guidance

Commissioning Brief Form  
Confidentiality Agreement  
Introduction to Investigation Meeting/  
Statement template  
Investigation Report template  
Time Recording Sheet – *HR access only*  
The Disciplinary Procedure FAQs

## Letters and templates

Letters confirming investigation meeting date  
Letters for investigation meeting statements  
Letter informing of delays  
Letter informing of end of investigation  
Letter of invite for member of the public to attend  
a grievance investigation meeting

## Associated policies

Disciplinary Manager Guide  
Disciplinary Employee Guide  
Grievance Manager Guide  
Grievance Employee Guide



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The audience of this document is made aware that a physical copy may not be the latest available version.

The latest version, which supersedes all previous versions, is available on The Source.

Those to whom this policy applies are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times.

**History of most recent policy changes:**

<b>Version</b>	<b>Date</b>	<b>Change</b>
V.1.01	31 March 2015	Advice added for instances where early in an grievance investigation it becomes evident that a disciplinary investigation would be more appropriate
V.1.00	24 July 2014	Re-formatted policy

