

Staff Misconduct

Investigation Standards

The standards to be adhered to by an Investigator in undertaking an investigation into a staff member's conduct

Nov 2017

Definitions

Employment Instrument: An instrument that has legal application with respect to minimum entitlements to those employees covered within its scope.

Investigator: A person who carries out a searching inquiry to establish facts.

Investigation: The action of searching or inquiring into the particulars of an allegation in order to establish the facts.

Investigation plan: An approved terms of reference for an investigation. It clarifies and confirms the scope, objectives and timing of the investigation (as specified by the Executive Manager in their engagement letter), thus setting the boundaries within which the investigator should conduct his/her work.

Investigation report: A formal document submitted at the completion of an investigation which includes:

- findings of fact concerning the allegation(s) referred for investigation, stating the basis for those findings of fact;
- findings as to whether the allegation(s) have, on a balance of probability, been substantiated, unsubstantiated or a statement that a finding could not be made; and
- identification of any relevant mitigating circumstances arising from the investigation.

Procedural fairness: The requirement for a fair and proper procedure to be used when making a decision. The rules of procedural fairness require:

- a hearing appropriate to the circumstances;
- lack of bias;
- evidence to support a decision; and
- inquiry into matters in dispute.

INVESTIGATION STANDARDS

1. AUTHORITY

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| 1.1 | The Investigator shall not commence an investigation without first receiving appropriate management authorisation to do so. |
| 1.2 | A letter of appointment addressed personally to the Investigator's Line Manager from the appropriate Executive Manager will provide the authorisation required to conduct the investigation. |
| 1.3 | In order to adequately inquire into the matter which is to be investigated, the Investigator shall be delegated sufficient authority to gain access to all necessary sources of information required, including, but not limited to, witnesses, expert knowledge, systems and records. |

2. CONFIDENTIALITY

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| 2.1 | Confidentiality is required for an effective investigation. |
| 2.2 | Confidentiality, in an investigation, is in the interest of the University and all parties to the investigation including the respondent to the allegation(s). |
| 2.3 | The Investigator cannot guarantee anonymity due to the requirements of procedural fairness. |
| 2.4 | The Investigator shall have a 'duty of confidentiality' in that an investigator shall be entrusted to maintain confidentiality of all information collected and use it only for the purpose of the investigation. This duty shall continue after an investigation is concluded. |
| 2.5 | The Investigator shall do all that is necessary to keep confidential the identity of the source of information obtained, the identity of those involved in the investigation, and any information, including hardcopy or electronic, gathered during the course of the investigation. |
| 2.6 | Appropriate physical and electronic security shall be maintained at all times over investigation files and associated materials. |
| 2.7 | Information shall only be disclosed as required by the legitimate needs of the investigation and in accordance with relevant law. |

3. PROCEDURAL FAIRNESS

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| 3.1 | The Investigator shall not be biased in conducting an investigation. |
| 3.2 | The Investigator shall remain impartial and open-minded,
3.2.1 Affording a fair hearing to all parties to a matter being investigated; and
3.2.2 Taking appropriate steps to avoid any actual, potential or perceived conflict of interest in undertaking the investigation in compliance with the Conflict of Interest Procedures. |
| 3.3 | The Investigator shall remove themselves, or shall be removed by a person with appropriate authority, from an investigation if bias is found to exist or arises, or there is a potential for bias to arise. |
| 3.4 | The Investigator shall ensure appropriate levels of disclosure to the respondent at all steps of the investigation process. |
| 3.5 | The Investigator shall contact all parties that the Investigator considers relevant to a matter being investigated, and invite them to take part in the investigation process, stressing that such involvement is voluntary. |
| 3.6 | The Investigator shall reach a conclusion on a matter being investigated only after making reasonable, logical, fair, rational and valid enquiries in accordance with the Investigation Plan. |

INVESTIGATION STANDARDS

3.7	<p>Persons involved in an investigation shall at all times be treated fairly which will include the investigator:</p> <ul style="list-style-type: none">3.7.1 Providing an explanation of the investigation process;3.7.2 Explaining that participation in the process is voluntary;3.7.3 Scheduling interviews at a reasonable place and time;3.7.4 Disclosing to witnesses who their evidence may be disclosed to, including the respondent, if applicable;3.7.5 Affording interviewees the opportunity to have an interpreter to assist if requested;3.7.6 Affording interviewees a support person in accordance with the relevant employment instrument present; and3.7.7 Being sensitive to the needs of the individuals concerned who may be adversely affected by the investigation process.
3.8	<p>An investigation shall be conducted without undue delay, after taking into consideration the scope, seriousness and complexity of the matter(s) to be investigated.</p>
3.9	<p>An update on the progress of the investigation shall be provided to the Investigator's Line Manager upon request. If an investigation is not completed within the agreed time frame, an explanation of the delay will be provided.</p>
3.10	<p>The Investigator shall remain independent in conducting his/her work and shall not be unduly influenced or coerced in forming an opinion in relation to the allegations investigated. Any attempt to influence or coerce the Investigator in any way shall be brought immediately to the attention of the Investigator's Line Manager.</p>
3.11	<p>To ensure that any action taken in relation to the Investigator's findings remains impartial, the roles of Investigator and decision-maker shall be undertaken by separate people.</p>
4. INVESTIGATION PLAN	
4.1	<p>An investigation shall be conducted in accordance with an appropriate Investigation Plan incorporating: background, scope and purpose, allegations, resourcing and timeframe for the investigation being developed.</p>
4.2	<p>The Investigation Plan will be approved by the Investigator's Line Manager, prior to an investigation commencing.</p>
4.3	<p>Any variation or changes to the Investigation Plan shall first be reviewed and approved by the Investigator's Line Manager in conjunction with the Investigator.</p>
5. EVIDENCE	
5.1	<p>The Investigator shall always conduct themselves with integrity and impartiality whilst maintaining the highest ethical standards.</p>
5.2	<p>The Investigator shall not be limited or restricted in any way in determining or deciding the best or most appropriate sources of evidence or information for conducting an investigation.</p>
5.3	<p>All evidence collected shall be assessed by the Investigator as to its reliability and relevance to the objectives of the investigation.</p>
5.4	<p>For all evidence gathered, the Investigator shall ensure there is some logical connection between the evidence and the facts at issue.</p>
5.5	<p>The Investigator shall make a finding on the evidentiary standards of 'the balance of probabilities.'</p>

INVESTIGATION STANDARDS

6. INVESTIGATION REPORT

6.1	The Investigator shall prepare a final report at the conclusion of an investigation.
6.2	The format of the final report shall be in accordance with internal procedures.
6.3	The final report shall be signed by the Investigator and approved for release by the Investigator's Line Manager.
6.4	Apart from the respondent, the final report shall be distributed to the Executive Manager who originally requested that the investigation be undertaken, and the relevant People Business Partner. In addition and where requested by the Corruption and Crime Commission or Public Sector Commission, a copy of the final report shall be issued to these bodies at the appropriate time.

7. RECORDKEEPING

7.1	Records of all discussions, phone calls and interviews taking place during the course of an investigation shall be created promptly, at the time they take place, or as soon as practicable thereafter.
7.2	All evidence referenced in the final report (records of computer use, audio recordings of interviews, written records of interview, written submissions made by the staff member and other parties, or other documentary material) shall be placed in an official University file.
7.3	The investigation file shall be stored in a manner which ensures its original condition, so as to minimise the chance of mutilation, destruction or contamination.
7.4	The investigation file and associated material shall be adequately secured at all times, both in hardcopy and electronic form.
7.5	Release of investigation files and/or records whether in hardcopy or electronic form to third parties shall occur only in accordance with internal policy and/or to meet legal and statutory requirements.