



CITY OF BIRMINGHAM EDUCATION DEPARTMENT

BASKERVILLE SCHOOL

Recruitment and Selection Complaints Procedure

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GUIDANCE FOR INVESTIGATIONS IN SCHOOLS – MODEL RECRUITMENT AND SELECTION COMPLAINTS PROCEDURE

This Content is applicable to both Teachers and Support Staff

This guidance is based on the City Council's guidelines for investigations, with suitable amendments to take account of the governance of schools. In particular it is acknowledged that most schools do not have senior managers with special training in investigation skills and that many schools do not even have enough managers with the seniority and experience required who have not been involved in the alleged misconduct as witnesses or otherwise. This guidance therefore recognises that the functions of 'commissioning officer' and investigator may be undertaken by the same person, and that training, whilst desirable, is not obligatory. Head teachers and other members of the leadership team will have had the opportunity of training in aspects of management involving relevant skills, such as careful questioning. This guidance itself provides some training and should enable a senior manager in a school to conduct a satisfactory, thorough investigation acceptable to all participants and capable of withstanding the rigorous scrutiny of an employment tribunal.

A complaint about recruitment and selection procedures may contain an allegation of unfair and illegal discrimination and therefore the investigation must be conducted having regard to this possibility.

1. Investigation

The governing body states in its policy that it requires an immediate, short, preliminary investigation of all allegations of misconduct, in order to establish that there are reasonable grounds for a full investigation. This guidance is concerned chiefly with a full investigation of a complex case.

The nature of the alleged misconduct will affect the type of investigation undertaken. Some incidents may be so straightforward and so obvious that, even though they are deemed gross misconduct, a short investigation will suffice. Others may not be counted as gross misconduct but involve perceptions and misunderstandings capable of different interpretations, even if there have been witnesses, and in such cases the investigation may take longer and involve more detailed enquiries.

Investigations should be completed between ten and twenty working days unless there are exceptional circumstances.

1.1 Role of the commissioning officer

When a complaint is received or an incident takes place which requires a full and detailed investigation an appropriate senior manager in the school, usually the head teacher, will undertake the function of a 'commissioning officer'. The commissioning officer will be accountable for commissioning the investigation, receiving the report which should include a summary,

conclusions and agreed recommendations, and making arrangements for appropriate subsequent action. In schools where insufficient senior managers are available to separate the roles of commissioning officer and investigator both roles may be performed by the same person.

The commissioning officer will act on behalf of the governing body and in cases where the conduct of an employee is being investigated will be at an equivalent or higher grade than that employee. The commissioning officer will normally be the head teacher, but in cases in which the head teacher has been involved, for example because he or she is the person against whom the allegations have been made or because he or she has been the person against whom the alleged misconduct has been perpetrated, another person should take the lead. When the head teacher's conduct is to be investigated, the procedure provides for the chair of governors to ask the appropriate Schools Support Manager to make the necessary arrangements. When the head teacher has been otherwise involved he or she should ask another member of the senior management team to act. If such a person is not available, the head teacher may approach the Schools Support Manager or Employee Relations Team for advice and assistance.

1.2 Key activities undertaken by the commissioning officer

- To identify a suitable investigator (see comments above about the practicality of separating the roles of investigator and commissioning officer).
- Consideration needs to be given to the suitability of the investigator, including ability, availability, impartiality, training/experience and also to ensure that there are no conflicts of interest, real or apparent. Preferably, investigators should have undertaken appropriate training.
- The investigation may be undertaken by the line manager or by a person from outside the school. Advice on the appointment of an independent investigator may be obtained from the Schools Support Manager or Employee Relations Team.
- To give a thorough brief (known as the terms of reference) to the investigator.
- To assist the investigator with access to key documents pertinent to the case.
- To identify, where necessary, a key person within the school as a link for the investigator.
- To monitor progress of the investigation and ensure timescales are met.
- To receive the investigation report and, where appropriate, to decide whether the case should be referred to the head teacher or the governing body's disciplinary committee and, if so, to present that case in accordance with the disciplinary procedure.

1.3 Terms of reference

The terms of reference should include:

- The nature of the allegation/complaint, including details of any specific incidents.
- Any relevant background information.
- The remit of the investigation (the aspects that need to be investigated and any that should be disregarded for the purposes of the investigation).
- A list of people to be interviewed initially. If there are witnesses to the allegations they should be interviewed by the investigator and will be expected to provide a signed and dated statement, except for pupils, who should be interviewed in accordance with the guidance for schools associated with the authority's Child Protection Procedures. The investigator may decide during the course of the investigation to interview more people. An employee making an allegation of harassment or with some other grievance will be encouraged to name witnesses for interview and the investigator must make every effort to ensure such interviews take place.
- Any relevant documents known at this stage that should be considered.
- Time limits for the investigation and writing of a report, including interim review dates to ensure that the terms of reference remain relevant as the investigation progresses.

1.4 Responsibilities of the commissioning officer on completion of an investigation

- Once an investigation is complete, the commissioning officer will meet with the investigator
- The commissioning officer will determine whether he or she is satisfied with the substance of the report, that there is a direct correlation between the report and the conclusions/recommendations and that there is no bias. Where the roles of commissioning officer and investigator are combined, the person undertaking the investigation should consider his or her own report critically before proceeding further, taking advice from the Employee Relations Team if he or she feels that questions might be raised over the findings.
- If the commissioning officer is not satisfied with the substance of the report (for example, there are questions over the findings) or if there are any issues requiring clarification, he or she will discuss these directly with the investigator.
- Changes can be made to the report and recommendations as appropriate and agreed by the commissioning officer
- The commissioning officer will then take ownership of the report and is accountable for agreeing an action plan to implement the recommendations. When the commissioning officer is acting on behalf of the chair of governors, the commissioning officer will make

recommendations to the chair of governors, who will be responsible for agreeing an action plan.

- In cases of grievance or harassment the commissioning officer is responsible for arranging to meet with the complainant to discuss the result of the investigation and any proposed actions.
- The commissioning officer may determine that disciplinary action is appropriate and, if so, should present the case in accordance with the disciplinary procedure.

2. CONDUCTING AN INVESTIGATION

2.1 Purpose

An investigation is a structured, impartial process of evidence gathering in response to a specific allegation(s) regarding personal conduct. It should be carried out with terms of reference as described above.

2.2 Good practice

All investigations should:

- Have timescales set in advance by the commissioning officer (as a target completion date rather than a rigid standard).
- Be conducted as soon as possible after the date in question
- Be conducted by someone with the necessary knowledge to understand the situation and implications and who also has the necessary degree of impartiality.
- Have a balanced approach and be conducted in a spirit of openness and fair play which avoids any bias.
- Be conducted using techniques which are sensitive to the individual situation and employees involved.
- Be undertaken in a logical and rigorous manner.
- Seek to explore rather than pre-judge.
- Seek to elicit facts (find out what actually happened rather than arouse emotional reactions on what it is thought happened).
- Be initiated and concluded in a timely manner, but not so as to compromise quality.
- Be based on a process which is respectful to everybody involved (the complainant, witnesses or individual who is implicated).
- Be seen as a learning process where appropriate feedback is given and harnessed for the good of the service.

2.3 Role of the investigator

- Where possible to have received prior training in investigation skills and techniques
- To plan the investigation required in order to establish the facts of the case.
- To identify and gather relevant documents which provide facts concerning the alleged incident.
- To ensure relevant statements are taken which provide facts concerning the alleged incident.
- To produce and present to the commissioning officer a full report of the investigation, the facts established and make recommendations for remedy as appropriate.

2.4 Key considerations

- Be aware of your own potential biases and assumptions and avoid any preconceived ideas.
- Develop an understanding and/or acceptance that different perspectives exist in the same situation.
- Have an understanding of equality legislation.
- Understand any policy of the school, such as the anti-harassment policy, under which the investigation is being conducted.

2.5 Process

2.5.1 Ensure you have terms of reference from the commissioning officer.

2.5.2 Produce a plan, considering the following:-

- Are the terms of reference clear?
- Are you clear about the expectations of the complainant?
- Are there any policy implications?
- What are the potential equality issues/dynamics?
- Who needs to be interviewed, in what order and where?
- Who will confirm the interview arrangements (including advising interviewees who are employees of the school of their right to request to be accompanied by a chosen representative who is either a trade union official or another employee of the school)?
- Who will ask questions and who will take notes?
- What questions should you ask and not ask?
- What other information will be helpful?
- What is the expected timescale?

2.5.3 Conduct structured interviews and gather evidence (see Annex A)

2.5.4 Statements from witnesses

The investigator will consider whether it is appropriate to produce statements by recording questions and answers. In doing this you will need to have regard for confidentiality and the difficulty that may be created if these are made available to all parties. If statements are taken they must be checked, agreed and signed. Annex A gives a suggested format allowing the interviewee to confirm that the account is accurate, make amendments or attach additional comments. If the interviewee makes changes or comments which you do not recall, a record should be made to that effect on the statement.

2.5.5 Review your plan and revise as required in the light of emerging evidence and practical considerations.

2.5.6 Collate and analyse the evidence

- Consider all the facts and evidence presented to you and analyse what can clearly be demonstrated as being factually correct.
- Make judgements on the 'balance of probability', i.e. given what you have found, how likely is it that the action(s) in question have occurred? You do not need to establish the case 'beyond reasonable doubt'.

2.6 Writing the report

A suggested format for reports on investigations is given as Annex C. Although each report is unique, there are some common rules to follow:

- Always include background information on the service within which the incident allegedly took place. The report may be used eventually in an internal appeal process or by an Employment Tribunal, so it is useful to set matters in context.
- Keep it simple, well structured and rigorously written. Make clear which facts are incontrovertible, i.e. what happened, who was involved, when it happened and where, why and how. Draw attention to any differences in the accounts given of the same event.
- Number documents and statements gathered and for ease of reference use those numbers when referring to them.
- Consider the use of tables to compare the response of witnesses to standard questions. This makes it easy to absorb evidence and form a reasonable belief regarding the weight of evidence or balance of probability of what actually occurred.
- Careful proof reading is needed. Avoidable typing errors, spelling mistakes etc. will reflect badly on the rigour with which the investigation was conducted.
- Special consideration must be given when an employee requests access to the report and the report contains information about a third party. There could be a breach of the Data Protection Act 1998 if information is released about a third party. Simply removing the third party's name from the report may be all that is required, but this is not always the case. A balance must be struck between the right of the individual to access and the right of the third party to privacy. **With this in mind it is helpful to write the report in a way that enables it to be issued to all parties.** Advice on confidentiality may be obtained by contacting the Employee Relations Team.
- If statements have been taken there is no requirement to send them out with the report. However, they will still need to be typed, verified and signed so that they are available if there is a request to see or use them at a later date.

3. Publishing the Report

- Once completed, the report should be presented to the commissioning officer for consideration and action as appropriate.
- Ensure the report is marked 'Private and Confidential' to ensure that only the commissioning officer has access to it in the first instance.
- The commissioning officer will decide whether to support the findings or whether there are further issues to be explored or clarified by the investigator and will meet with the investigator to discuss the report. Changes can be made to the report and recommendations in agreement with the commissioning officer.
- The commissioning officer will then take ownership of the report and ensure that the recommendations in it are carried out.
- The commissioning officer will also be responsible for telling the complainant that the investigation has been completed and what is to happen.
- All sensitive information should be treated confidentially and meet the requirements of the Data Protection Act 1998. If there is to be a disciplinary case the report will not be released to the complainant, because of the confidentiality of disciplinary proceedings.

ANNEX A – INTERVIEW STRUCTURE

Ensure interviews are held in a suitable place, where you will not be interrupted.

Introduction

- Introduce yourself and outline your role in the investigation.
- Confirm details of the interviewee (name, job title, length of time with the school).
- Note the date and time of the interview.
- If the interviewee is an employee of the school confirm the name of the interviewee's representative (if the interviewee does not have a representative, confirm that he or she is aware of the right which he or she has as an employee to request to be accompanied and give him or her the choice of deferring the interview to another day and obtaining representation in the meantime).
- Describe the terms of reference for the investigation.
- If a record of the interview is to be made, tell the interviewee and explain that a copy of the record will be sent to him or her for verification.
- Ask if the interviewee has any questions before the interview starts.

Conducting the interview

- It is vital that any investigation is dealt with sympathetically with due regard to the feelings and emotions of everybody concerned (including the alleged perpetrator).
- In cases of grievance or harassment, the complainant should be interviewed first with the aim of obtaining as much detail about the complaint as possible.
- Ensure that all persons attending interviews have been notified and informed of their rights to be accompanied by a representative.
- Interview all relevant persons using open (descriptive), closed, hypothetical and probing questions as appropriate.
- Do not lead interviewees or put words into their mouth.
- If the witness has already submitted a written statement at an earlier stage in the process ask that witness to confirm the accuracy of that statement and record any amendment or addition he or she may wish to make.
- Attempt to note accurately what is said and probe for clarification.
- Summarise information at intervals to check understanding and manage the conversation.
- Repeat what is said when necessary to ensure that there is no misinterpretation.
- As for demonstrations and diagrams if they can help you get a full picture.
- Pay attention to detail.

- When the alleged misconduct concerns something said or the complaint is one of verbal harassment, ask the interviewee to say or write the exact words spoken.
- Should any of the interviewees become distressed or aggressive suspend the interview for a short period or terminate it. In the case of termination consider how and when a fresh interview might be undertaken.
- In the case of a grievance or harassment, ask the complainant what kind of response he or she is seeking, without making any commitments.
- At the end of the interview ask if there is anything in relation to the investigation which the interviewee wishes to mention but which has not arisen during the interview.

Conclusion

- If a record of the interview has been made by way of a statement, confirm that a copy will be sent to the interviewee for verification and signature and indicate how soon the interviewee should return the signed statement. Agree an address for this correspondence (the interviewee might prefer a home address rather than the school).
 - Explain the plan for the investigation, including the planned date for submitting the report to the commissioning officer
 - Explain what might happen after the investigation and any possible consequences for the interviewee.
 - Ask the interviewee not to discuss the content of the interview and explain the possible consequences if confidentiality is breached.
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ANNEX B –WITNESS STATEMENTS

EITHER

**INVESTIGATION
NAME OF SCHOOL
DATE**

Record of interview

Name of Interviewee:

Job title:

Length of Service – time in job:

Name of employee's representative:

Investigator:

Place of interview:

Date and time of interview:

In opening the interview the investigator introduces himself or herself and explains the role in the investigation. Explain the terms of reference and confirm that a written record would be made and a copy provided to the witness to verify its accuracy.

Record of questions and responses:

Interview finish time:

Closing: explain that a report would be written and submitted; explain how this might affect them.

Ask the interviewee to maintain confidentiality.

I agree that this is an accurate record of the interview

I have made changes and with those changes I agree that this is an accurate record of the interview

I have attached additional comments

Print Name of interviewee:

Signature:

Date:

OR

INVESTIGATION

NAME OF SCHOOL:

DATE:

Witness Statement

Name of Witness:

Job title:

Name of representative:

- Record of your recollection of what happened giving details on names, dates, and times where appropriate together with details.

Print Name of Witness:

Signature:

Date:

ANNEX C – FORMAT FOR REPORT

Title of Investigation

Investigation into the allegation(s) of XXXXXXXX

Terms of Reference

Describe how the incident came to light and the scope / objectives of the investigation.

Purpose

To establish if there is any evidence to support the allegation(s) / describe the methodology of the investigation.

Findings

Background to the case

Outline of the case

Name of those interviewed

What evidence has been obtained?

Has evidence of other issues been uncovered that is substantial to the case?

Supporting evidence for the allegation (s)

Any conflicting advice

Conclusions

What can be deduced from the evidence?

Consideration of Blameworthiness V Mitigating Circumstances

Recommendations

Is there a case to answer?

Actions to be taken, by who? and by when?

Name of the author of the report:

Position:

Name of the Commissioning Officer:

Position:

Date

Attachments

List of supporting evidence e.g. statements, policies, diagrams, forms etc.

date

Private & Confidential

Dear Name

I am writing to confirm that a formal investigation is being undertaken in accordance with the recruitment and selection complaints procedure adopted by the Governing Body of _____ School, a copy of which I enclose for your information.

The allegation to be investigated is –

I will undertake this investigation and will need to meet with you as part of this investigation. I am writing to confirm that you are required to attend an investigation meeting on _____ at _____ hours. The meeting will be held at _____.

As an employee of the school you have the right to be accompanied by a representative of your choice, who is either a Trade union official or an employee of your employer.

At the end of the investigation a written report will be submitted for consideration and you need to be aware that this could lead to a disciplinary hearing.

Yours sincerely

Name
Job title

INVESTIGATION

NAME OF SCHOOL: _____

DATE: _____

Terms of Reference

Title of Investigation

Investigation into the allegations relating to recruitment and selection for
XXXXXX

Purpose / Background

XXXX has alleged that on (date) XXX did XXX

- Nature of the allegation including details of any specific incidents.

Investigating Officer

Name of Investigating Officer

Objectives and Scope of the Investigation

To fully investigate the allegations made by:-

- Interviewing all persons other than pupils directly involved in the allegations / incidents.
- Interviewing any other persons other than pupils who may contribute evidence in relation to the allegations.
- Look at documentary evidence that may be relevant to the allegations.
- Obtaining evidence to assess how all parties involved have conducted themselves during the event, looking at Policies and Procedures.
- To produce a written report to close the investigation detailing the findings, conclusions, and recommendations, including whether there is a case for disciplinary procedures.

Pupils should be interviewed in accordance with the guidance for schools associated with the authority's Child Protection Procedures.

Timescales

The investigation will start on XXXX and is expected to be completed by XXXX. If any extension is needed to this timescale then you will be informed of this in due course.

Between 10-20 working days, any extensions should arrange to meet with employee to explain reasons.

INVESTIGATION

NAME OF SCHOOL: _____

DATE: _____

Investigation Plan

- ✓ Are the terms of reference clear?
- ✓ Are you clear about the expectations of the complainant?
- ✓ Are there any policy implications?
- ✓ What are the potential equality issues/dynamics?
- ✓ Who needs to be interviewed, in what order and where?
- ✓ Who will confirm the interview arrangements (including advising interviewees of their right to be accompanied by a representative or friend)?
- ✓ Who will ask questions and who will take notes?
- ✓ What questions should you ask and not ask?
- ✓ What other information will be helpful?
- ✓ What is the expected timescale?

INVESTIGATION

NAME OF SCHOOL: _____

DATE: _____

OPENING

- Thank you for attending.
- Introductions.
- Explain that notes will be taken of the meeting.
- Explain the purpose of the meeting.
- Investigation is an impartial process of evidence gathering in response to an allegation, and is done to establish if there is a case to be answered.
- A number of questions will be asked to clarify the events of the day.

MAIN

Main questions that need to be asked to go into here

Example,

- An incident took place on xxxx. Please can you tell me in your own words what happened on that day.

CLOSING

- Is there anything else that you feel is important to this investigation that you would like to add?
- You'll be given a written account of this interview, to verify its accuracy. Please ensure these minutes are returned to us within 5 working days.
- When I have completed the investigation I will put together my report and establish if there is a case to be answered or not. You will be advised of this in due course.
- Ask the interviewee not to discuss the content of the interview and maintain confidentiality.
- Anything else.
- Thank and close meeting.

MINUTES CONFIRMATION/COMMENTS

Please tick and sign as appropriate

I agree that this is an accurate account of interview

I have made amendments on the document and agree that this is an accurate account of the interview

I have attached additional comments

PRINT NAME:

Signature:

Date: