

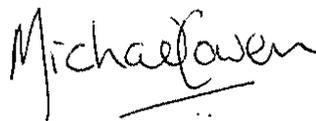
# GUIDANCE REGARDING CONDUCTING INVESTIGATIONS FOR SCHOOL BASED STAFF

Name of School: Nelson Thomlinson School

Date by which School have adopted procedure: March 2022

Date by which the procedure was last reviewed: **May 2012**

Anticipated review date by Children's Services HR and Trade Unions: **2012/2013 academic year**



Signature of Co-Chair of Governors:

# Cumbria County Council Children's Services

## 1. Introduction

In order to ensure that fair and effective arrangements exist for conducting investigations, the following guidance has been produced in order that investigations may be resolved as efficiently, fairly and promptly as possible.

This document represents agreement between the Local Authority (LA) and the recognised trade unions, and was adopted by the Governing Body of this School in March 2022, and shall be regarded as a party to this agreement for all purposes.

There are several policies and procedures which underpin the approach to conducting investigations. It is important to be fully conversant with these policies and procedures. They are listed below, and can be found on the school portal:

- Disciplinary & Dismissal Procedure
- Management Advice – Discipline Guidelines & Advice Disciplinary & Dismissal
- Grievance Procedure
- Procedure for dealing with complaints of Bullying & Harassment
- Capability Procedure

There are also key pieces of legislation relating to investigations:

- Employment Rights Act 1996 - Right not to be unfairly dismissed, including constructive dismissal
- Employment Relations Act 1999 - Statutory right to be accompanied by a TU official or work colleague at all formal disciplinary and grievance hearings
- Data Protection Act 1998 - Covers all records about an employee, both manual and computerised. Gives individuals the right to access their own personal records, including all records kept about investigations
- ACAS Code of Practice 2009 – Procedure to be followed by employers and employees when dealing with disciplinary and grievance issues
- Equality Act 2010 – Right not to be treated less favourably than others because of race, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, sex, sexual orientation, disability or age
- Access to Medical Records Act 1988
- Access to Health Records Act 1990

If you have any questions regarding changes within Employment Law whilst conducting an investigation you will seek advice from your HR Provider/relevant diocesan authority (where appropriate) or CCC Legal Services.

**You are strongly advised to seek support and advice from the LA/HR Provider/Diocese before conducting an investigation.**

**Note: Matters/allegations concerning child protection/allegations of abuse against employees must be dealt with in accordance with the Department for Education document 'Safeguarding Children and Safer Recruitment in Education' January 2007 and 'Working Together to Safeguard Children' produced by the DCSF in March 2010 (chapter 6 and appendix 5 of this particular document contains guidelines and procedures for managing allegations against people who work with children).**

Subject to the above, if related allegations (regarding child protection matters) are being investigated by the police, an employer can usually mean that an employer can continue to investigate even though a police investigation is taking place. There is usually no need to await the outcome of the police investigation, as the issues surrounding the dismissal and a police investigation are quite different. Usually, the only reason to delay an investigation is if the police/CPS feel that this may interfere with their investigation. The police/CPS must be consulted on the matter if it is felt this may be the case. This should be discussed with the Local Authority Designated Officer (LADO).

A copy of this guidance document should be handed out to all appointed Investigating Officers, including those who are appointed externally.

**Note – Failure to follow advice from the Local Authority even where this differs from the advice of your HR provider could result in the Local Authority not funding the cost of any compromise and/or tribunal claims.**

## **2. Appointing an Investigating Officer (IO)**

2.1 A number of factors will determine who should undertake an investigation. The first point to establish is the nature and seriousness of the alleged offence. This will determine which of the following arrangements are appropriate:

- i) In cases of allegations of a sexual nature involving pupils/students of any age in full time education at an establishment maintained by the LA, the investigation will be undertaken in accordance with the Child Protection Procedure. This will involve a joint approach by the Police and Children's Services.
- ii) In the case of alleged financial misconduct the audit team as well as the Director of Children's Services must be informed. The audit team will liaise with the school in deciding how to proceed. This could involve notification to the police who might then undertake a criminal investigation. Alternatively an investigation conducted by the Corporate Director (Finance) audit team might be appropriate.
- iii) In many other cases an investigation could normally be conducted by a Deputy Headteacher or other senior member of staff. This may be supported by a representative from the school's HR provider. The Headteacher should not act as an investigator as s/he would normally hear the case.
- iv) In other circumstances e.g:
  - such as within small schools
  - lack of appropriate resource within a school
  - the nature or complexity of the allegation

An independent IO free from the influence, guidance or control of others may be appointed from outside of the school. Where there is a potential for bias or a conflict of interest an independent IO should be appointed.

2.2 In all cases in which it is alleged that a teacher or member of staff (including a volunteer) in a school has:

- i) Behaved in a way that has harmed a child, or may have harmed a child;
- ii) Possibly committed a criminal offence against or related to a child; or
- iii) Behaved towards a child or children in a way that indicates s/he is unsuitable to work with children

It must be reported to the Local Authority Designated Officer (LADO) with a copy to Children's Services HR: The role of the LADO will be to follow up these cases with social care and the police. For a current up to date list of contact names and details please refer to the contact list available on the school portal.

2.3 Some cases will also need to be reported to the Independent Safeguarding Authority for consideration of including the person on the children's barred list, or consideration by the General Teaching Council (GTC) about the possible sanctions against an individual. This should be discussed with the LADO.

### **3. The role of an IO**

3.1 The role of an IO is to:

- i) Investigate the allegation or complaint
- ii) Gather facts and evidence including conducting interviews if necessary
- iii) Form a view, based on the facts, as to whether there appears to be a case to answer
- iv) Produce a report to go to the Headteacher/Chair of Governors or the appropriate person e.g. LA representative
- v) It may be necessary to present the report at a disciplinary hearing.
- vi) The IO may also be required to attend an employment tribunal hearing and stand as a witness on the report which s/he has prepared.

3.2 The IO should be advised of their role as set out in 3.1 and by agreeing to be an IO they agree to conduct their role as set out in this guidance

3.3 The IO must decide (with advice from LA/HR Provider/Diocesan Officer) which procedure to conduct the investigation under, and must also be sure that s/he is best placed to conduct the investigation i.e. whether there is any reason why s/he should not conduct it (e.g. time restraints, conflicts of interest). If there is such a reason the IO should declare it before the investigation gets under way so that another IO

can be appointed at the earliest opportunity without any delay or compromise to the investigation.

3.4 The IO must maintain confidentiality throughout the process (and should also advise witnesses that they must do the same) and should only discuss the progress of the investigation with the Headteacher/Chair of Governors or appropriate person unless required or permitted to be disclosed by law or any Court or Tribunal or with the consent of the employee concerned. In the event of the Headteacher/Chair of Governors being subject to investigation the point of contact should be the LA HR Team. All verbal and documentary evidence should be kept confidential and securely stored.

3.5 The investigation should be carried out as quickly as possible and the IO should normally aim to provide a report to the Headteacher/Chair of Governors or appropriate person within 10 working days of completion of the investigation. It is recognised that some matters may take longer to investigate. Any delays with regards to timescales should be flagged up to the LA/HR Provider/Diocesan Officer

#### **4.0 Gathering evidence**

4.1 In order to gather evidence in the most effective and efficient way, the IO must decide upon a schedule of activities: who to interview and in which order (it is highly recommended that the IO meets with the complainant first followed by all other individuals), an interview timetable and interview questions. It is not always necessary to interview all witnesses to an incident, if for example their evidence is entirely corroborative, and so during the course of an investigation the IO may decide that s/he has gathered enough witness evidence and does not need to interview anyone else.

4.2 The IO should carry out the investigation without unnecessary delay. If any delays are envisaged they should be reported to the Headteacher/Chair of Governors or appropriate person as soon as possible and the schedule of activities mentioned above in 4.1 should be amended accordingly.

4.3 Evidence may come from a number of different sources: eye witnesses, CCTV or documentary evidence; corroborative evidence (e.g. a visit by the IO to the location where the incident took place). The IO should think laterally around the incident/allegation or complaint being examined, and consider and fully explore all the possible sources of evidence. This is particularly important where there appears to be no evidence from independent witnesses, e.g. with cases regarding a complaint of harassment.

#### **5.0 Interviewing parties and witnesses**

5.1 The principal source of evidence will be the verbal accounts of the parties involved – the person accused of misconduct and the person making the complaint (if applicable). There may also be a third party witness who saw the incident or can provide any further information on the matter.

5.2 Sufficient time should be allocated to each interview. During the course of conducting interviews the IO should remain entirely impartial, not pre-judging the matter in any way or allowing any prior knowledge of the parties or circumstances to

influence the outcome of the investigation.

5.3 It is recommended that the IO is accompanied at interviews (where possible) by an Assistant IO or another colleague to take notes. It is difficult to fully concentrate on asking questions, listening, observing body language etc whilst taking comprehensive notes. Please refer to section 8.2 regarding the employee under investigation's right to be accompanied.

5.4 If the interviewee refuses to answer any questions the IO may tell her/him that an inference may be drawn from the refusal. The IO may suggest an adjournment so that the representative can consult with the interviewee, before continuing to ask questions regarding the allegations

5.5 Key skills required by the IO are:

- i) Impartiality
- ii) Preparation, organisational and time management skills
- iii) Thorough approach
- iv) Logical thinking and ability to see a case from all sides
- v) Presentation and communication skills
- vi) Questioning skills – these are essential in gathering facts and evidence. Techniques should include asking open questions, probing answers given to gain further specific information, and not taking information at face value. This means asking for specific examples and obtaining dates, times and locations where incidents took place. Leading questions or making suggestions to the interviewee should be avoided.
- vii) Listening skills – It is vital to listen carefully in order to check for gaps in evidence, to clarify facts, and to be able to summarise what has been said.

## **6.0 Producing statements and the report**

6.1 The investigatory interviews will result in the production of detailed notes of the discussions held. From these notes the IO will derive a statement for each person interviewed. The statement will provide a succinct record of the interviewee's version of events. It should include the date, time and names of those present; the questions asked followed by the response, together with the initials of the person speaking; and space at the bottom for the interviewee to sign and date the statement as being an accurate record.

6.2 Statements should be sent to the interviewees for prompt signing and returned immediately to the IO. Interviewees should be reminded that the information they give may be used as evidence against the person for which they are being questioned in a future disciplinary hearing and that in signing the accuracy of the statement they are agreeing to their evidence being used for such purposes. If they do not wish for their name to be disclosed, then consideration should be given as to whether it is appropriate to anonymise their details for the purposes of the report. If the individual contests any part of the statement but the IO and note taker believe it to be accurate in accordance with the interview notes, then the interviewee's

amended section or version should be appended to the original statement.

6.3 The IO will produce a final report which will be accompanied by witness statements and all supporting documentary evidence. Its purpose is to summarise why the investigation arose, how it was carried out, to identify key facts, evidence and any other relevant circumstances and to conclude with a summary of the findings of the IO. The report will also consider the IO's findings on the balance of probabilities – is there no case to answer, or is there sufficient substance to the allegation or complaint for further action to be taken?. The IO must have reasonable belief based on reasonable grounds, after as much investigation as is reasonably practicable in the circumstances to believe that there is or is not a case to answer. The report will go to the Headteacher or Chair of Governors, who will decide whether to take further action. The report must be thorough and accurate as the IO may be cross examined on the content at a later date

6.4 Following the outcome of the hearing, the report shall be kept on the employee's personnel file for the same duration as the warning which they received in accordance with the Disciplinary and Dismissal Procedure; or if the employee is dismissed, the report shall be retained on the employee's personnel file.

6.5 If the outcome of the report is that there is no case to answer, the employee shall be entitled to see the report if they so request and the outcome will be recorded on file.

## **7.0 Presenting the case at a hearing**

7.1 If a disciplinary hearing follows the investigation, the IO will attend the hearing and may be required to present the facts of the case. The purpose of the hearing is to consider the evidence and arrive at a decision, and then go on to consider any mitigation and the employee's record to determine an appropriate disciplinary penalty.

7.2 Key points for the IO to remember when appearing at a hearing:

- i) Know the facts and evidence of the case
- ii) Structure the presentation clearly and logically, only including relevant information
- iii) Aim for clarity and simplicity, avoid jargon
- iv) Display confidence in the way the investigation was conducted

## **8.0 Trade Union input**

8.1 Individuals involved within an investigation, either as the person accused of misconduct/complaint, or as a witness may seek advice and support from their union representative.

8.2 The employee(s) under investigation and any witnesses may be accompanied at all stages of the applicable procedure either by a trade union official or work based colleague. Reasonable adjustments will be made for disabled employees.

8.3 At any formal hearings the employee's representative may address the hearing in order to put the employee's case or respond on their behalf to any view expressed at the hearing; but s/he may not answer any questions on the employee's behalf.

**Guidance agreed by Management and Trade Unions on 23 October 2012**

**Adopted by Nelson Thomlinson School Governing Body**

**On (Date) March 2022**

A handwritten signature in black ink that reads "Michael Owen". The signature is written in a cursive style with a horizontal line underneath the name.

Signed

Chair of Governors