

## **EMPLOYEE GUIDANCE TO EMPLOYMENT INVESTIGATIONS**

### **What is the purpose of the investigation?**

To determine the facts associated with the allegations. There are different possible outcomes from an investigation; namely that no further action is necessary; that the issues can be dealt with informally as management action; e.g. retraining, or that the issues are considered serious enough to warrant disciplinary consideration, in which case a formal Disciplinary Hearing will be convened.

### **Who will undertake the investigation?**

In most cases employment investigations will be undertaken by a nominated manager who has received training in conducting investigations. The manager concerned will have had no prior involvement in the matter and will undertake an impartial and objective investigation.

Particular investigations, e.g. into alleged theft or fraud, will normally be undertaken by an Investigator from the Council's Counter Fraud and Investigations Team (CFIT). Exceptionally, it may be felt appropriate for an external Investigator to undertake an investigation.

Dependent upon the nature and seriousness of the alleged misconduct there may be other, separate, investigations undertaken at the same time as the employment investigation, e.g. allegations concerning an employee's conduct in respect of a child or vulnerable adult may be the subject of a Safeguarding investigation. There may also be Police investigations.

Additionally, at any point during an Investigation, the Lead Manager with advice from the HR Adviser would be required to consider whether any professional bodies need to be informed of any allegations of misconduct. Where required, the HR Adviser will inform the relevant bodies, e.g. The Teaching Agency or the Health and Care Professions Council that an employee is subject to an investigation due to allegations of misconduct.

The HR Adviser will ensure that professional bodies are updated accordingly in terms of progress with the Council's procedures and that they receive copies of any documents as appropriate.

### **What is expected of me?**

Council employees are expected to co-operate fully, openly and honestly with employment investigations; whether as the subject of the investigation or as a witness. They are required to attend any meetings, interviews and hearings. To not co-operate or provide false or misleading information may be considered misconduct.

Employees are also expected to observe strict confidentiality in respect of their involvement and not to openly discuss the investigation other than to obtain appropriate support, e.g. legal or trade union advice and guidance.

Whilst the investigation is a formal process, in order to minimise unnecessary formality and apprehension, the electronic, audio or video recording by any device of such meetings/hearings will not be permitted. Should an employee think that there are

exceptional circumstances where this should be allowed (for instance, due to a disability) this should be raised in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and the employee will be advised of the outcome of that consideration.

Where the nominated notetaker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

### **Who may be interviewed as part of the investigation?**

Normally employees under investigation and complainants will be interviewed. Additionally, individuals identified as witnesses, may be interviewed as part of the investigation process. Witnesses are expected to make themselves available for interview, to co-operate fully with the Investigator and provide all the facts they are aware of, together with any supporting evidence. Witnesses may also be called (by either management or the employee under investigation) to attend any subsequent Disciplinary Hearing and will be expected to attend to provide evidence.

The employee under investigation will be provided with the opportunity to identify any potential witnesses in support of their explanations and the Investigator will consider the need to interview these. Investigators will not normally interview individuals for the purpose of a character reference, unless there is good reason to do so.

### **What if I am unable to attend an investigatory interview?**

The Investigator (or Manager/HR Adviser) will contact you to arrange with you your interview. Therefore, there should normally be no reason for non-attendance. However, employees unable to attend investigatory interviews due to sickness or some other reason (or their representative is unable to attend) may have the interview postponed. In such circumstances it will be rearranged as soon as is practicable. In the case of prolonged absences it may be decided to conduct the interview by telephone or by providing questions in writing. In the case of a minor witness it may be decided the evidence is not that important and the interview may not take place.

It should be noted that conducting an interview on the basis of submitting written questions and the receipt of written answers is a last resort. It is not an option automatically available to employees. If this option is chosen, the Council reserves the right to clarify the answers provided by means of a face to face interview, where required and if practicable.

Whilst employees may feel “stressed” and anxious as a result of involvement in an investigation, issues will not be put on hold indefinitely awaiting an employee’s return to work. Employees may be referred to Occupational Health for advice and guidance on their ability to return to work and/or participate in the investigation.

### **What support is available?**

All Council employees have access to the Council’s free and confidential counselling service. Contact details:

Telephone: 55440 (if dialling internally) or 01522 555440 if calling externally

Email: [emp.supportandcounselling@lincolnshire.gov.uk](mailto:emp.supportandcounselling@lincolnshire.gov.uk)

The employee who is the subject of the investigation will also have a Support Officer identified. In some cases, if considered appropriate, other participants in the investigation, e.g. the complainant, may also have a Support Officer identified. At investigatory interviews (or Disciplinary Hearings) employees have the right to be accompanied see below.

### **Can I have someone to accompany me to the interview?**

The employee under investigation is entitled to be accompanied at an investigatory interview by either a Council work colleague or recognised trade union officer/representative. There is generally no requirement for witnesses to be accompanied but they can also have a Council work colleague, recognised trade union officer/representative attend if they wish.

During an investigation interview the role of the chosen representative is as 'silent support'. They should not take part in the interview other than to seek clarification of issues. They cannot answer questions on the employee's behalf and will be bound by the same confidentiality requirements as the employee.

Whilst the investigation is a formal process, in order to minimise unnecessary formality and apprehension, the electronic, audio or video recording by any device of such meetings/hearings will not be permitted. Should an employee think that there are exceptional circumstances where this should be allowed (for instance, due to a disability) this should be raised in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and the employee will be advised of the outcome of that consideration.

Where the nominated notetaker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

### **As a witness can I refuse to be interviewed?**

All Council employees are expected to co-operate fully with employment investigations. Failure to do so could be considered misconduct. The Council accepts it may be difficult and distressing for employees to go through the interview process and that some may be reluctant to co-operate for fear of reprisals. However, it is expected that employees will make themselves available for interview (and Disciplinary Hearings) if required.

The Council will not tolerate victimisation of any individual for co-operating with an investigation. Any unfair treatment or unacceptable behaviour should be reported to management or raised with the Investigator and may be dealt with as misconduct.

### **As a witness, what support is available?**

All Council employees have access to the Council's free and confidential counselling service. Contact details are:

Telephone: 55440 (if dialling internally) or 01522 555440 if calling externally.

Email: [emp.supportandcounselling@lincolnshire.gov.uk](mailto:emp.supportandcounselling@lincolnshire.gov.uk)

In addition if the employee is a member of a Trade Union, they can access support through this route.

Witnesses may be accompanied by a work colleague or trade union representative at interviews (though not essential). During an investigation interview, the role of the colleague or representative is as 'silent support'. Such individuals should not take part in the interview and cannot answer questions on behalf of the employee concerned. Friends and family should not be allowed to attend unless there are special circumstances.

**Will I get a chance to give my side of the story?**

Employees under investigation will generally be interviewed towards the end of employment investigations. It is recognised that in some circumstances the employee under investigation may be anxious to provide information to the Investigator early on in the investigation and therefore the employee can request an early interview. Any such request will be carefully considered by the Investigator. Similarly, the Investigator will consider whether it would be useful to interview the subject of the investigation early on in the investigation. It should be noted that if the employee who is the subject of the investigation is interviewed early it is very likely that he/she will need to be interviewed again at the end of the process, for clarification purposes.

**What if I remember something important after my interview?**

The Investigator will advise those who are interviewed that if they later remember something important, which is not included within the interview statement, they should contact the Investigator and arrange a further meeting or telephone interview (subject to the timescales for completion of the investigation).

The Council has access to tape recording equipment and its use will be assessed on a case by case basis.

Where tape recording equipment is used, the process to be followed is:

1. The Investigating Officer will take a declaration with them to the interview which explains the process and will ask the witness if they would like a copy of the transcribed interview. The employee will then sign and date the declaration at the interview and this will identify if they requested a copy at the time. This will be used in the bundle if the case goes to a hearing. If the employee is the subject of the investigation then they will automatically be given a transcript of the interview and they will also sign and date the declaration at the time of the interview.
2. The conversation about the process and the declaration will be taped as part of the interview

Where tape recording equipment is not used, following the interview employees will be provided with a copy of the statement they have given during the interview and invited to confirm this as a true and accurate record of the interview.

In some instances, particularly if further allegations of misconduct emerge, it may be necessary to interview individuals further.

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