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<b>Related Trust Policies</b> (to be read in conjunction with)	(Refer to the main body of the text)  Dignity and Respect at Work Policy or equivalent Disciplinary Policy or equivalent Appeals Policy or equivalent Bullying and Harassment Policy or equivalent Grievance Policy and Procedure or equivalent
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## 1. Introduction

1.1 The workforce investigation policy provides a framework for undertaking investigations when concerns have been raised about a team or member of staff, when allegations have been made against staff or when an individual may have committed an act of misconduct. Investigations are part of the formal stages of the workforce policy and procedures; they are a considerable investment of Trust resources and support fair and reasonable decision making. They can be instigated in response to:

- Conduct concerns;
- Capability concerns;
- Grievances;
- Bullying and harassment complaints;
- Whistleblowing concerns;
- A Fact finding process.

1.2 This policy and procedure aims to ensure that investigations are carried out promptly, in a fair and consistent manner and allowing individuals the opportunity to respond to the matter under investigation.

## 2 Scope

2.1 This policy and its associated procedures will apply to all staff directly employed by the Trust. This includes trainees, secondees and staff on honorary contracts or on joint contracts with the Trust and another employer. Specific terms and conditions apply to Medical staff and Dentists and the Maintaining High Professional Standards (MHPS) In the Modern NHS framework, which should be referenced when conducting these investigations.

## 3 Definition

TERM	DEFINITION
<b>A workforce investigation</b>	A systematic and thorough attempt to establish the facts about a workplace concern. It is a formal mechanism employed relating to specific workforce policies and procedures which support decision making and contribute to the resolution of a range of employee relations issues.
<b>Trust</b>	Mid and South Essex NHS Foundation Trust

## **4 Roles and Responsibilities**

### **The Trust**

- 4.1 The Trust undertakes to ensure that any investigation will be fair and transparent.
- 4.2 The Trust undertakes to recognise and learn from incidents to ensure that the lessons are learnt and acted upon appropriately; most specifically those related to the health, wellbeing and safety of staff and stakeholders.

### **Managers**

- 4.3 Appropriately trained managers will undertake and participate in investigations as necessary. Where managers are asked to conduct an investigation they will do so in a timely manner, ensuring that a thorough investigation report is completed in line with this policy.
- 4.4 Managers will seek advice and support from the Employee Relations Team when completing investigations and on the implementation of this policy as necessary.

### **Staff**

- 4.5 All staff are expected to engage with any workforce investigation as appropriate and adhere to this policy.
- 4.6 All staff involved in a workforce investigation are expected to maintain appropriate confidentiality during and subsequent to the investigations completion. If a breach of confidentiality occurs then the individuals may be subject to disciplinary action.

### **Human Resources**

- 4.7 The Chief People and Organisational Development Director has delegated responsibility from the Board to ensure this Policy and associated procedure is properly implemented and monitored.
- 4.8 The Employee Relations Team has a responsibility to ensure that this policy is followed, fairly and consistently and to provide advice, support and assistance where required.
- 4.9 The Head of Employee Relations is responsible for convening Fair Treatment Panels which will review the decisions of all commissioning managers relating any disciplinary action to be taken
- 4.10 The Head of Employee Relations is responsible for reviewing any concerns regarding the appointment of an investigating Officer and advising the Commissioning Manager on an appropriate resolution to any concerns.

## **Trade Unions**

4.11 Trade Union representatives will:

- Advise, accompany and support the individual appropriately;
- Work constructively to ensure the best outcome in the circumstances.

## **Commissioning Manager**

The Commissioning Manager will usually be the manager who:

- 4.12 Receives a formal written complaint in the case of either a Grievance, and / or Bullying and Harassment complaint and the matter cannot be resolved without investigation
- 4.13 Receives a formal written complaint or is made aware of a concern
- 4.14 Identifies that an issue or situation has arisen which requires an investigation in accordance with this policy
- 4.15 Has an appropriate level of authority (Band 7 or above).
- 4.16 The Commissioning Manager appoints an appropriate Investigating Officer and Note taker for the investigation process. The Commissioning Manager will liaise with a member of the Employee Relations Team to draft terms of reference for the investigation.
- 4.17 The Commissioning Manager will review the investigation report and be responsible for suggesting the course of action that will be taken and submitting this to Head of Employee Relations to schedule a Fair Treatment Panel.

## **Investigating Officer**

- 4.18 The identified investigating officer where possible should be from outside the ward/department/directorate/division concerned; in order to ensure impartiality and avoid a conflict of interest.
- 4.19 The Investigating Officer is responsible for undertaking a thorough, fair investigation to establish the facts.
- 4.20 The Investigating Officer will interview the individual and relevant witnesses as part of the investigative process.
- 4.21 The member of staff who is subject to investigation may be interviewed on more than one occasion as the Investigation evolves and further points for clarification arise. Witnesses may also be interviewed on more than one occasion as the Investigation evolves and further points for clarification arise.
- 4.22 The Investigating Officer will be responsible for ensuring all the appropriate information is gathered in a way that preserves the integrity of the information and does not subject witnesses to undue pressure. Once the investigation has been concluded a summary of findings and conclusions in the form of a report should be

prepared and submitted to the Commissioning Manager with a copy to the relevant member of the Employee Relations Team.

## **5 Policy**

### **Key Issues**

- 5.1 An Investigation is a systematic and thorough process to establish the facts about an issue; problem or situation. Investigations involving doctors and dentist are conducted under MHPS framework and the principles set out in this policy will apply.
- 5.2 The Trust recognises the need for open, honest and effective communication with staff and patients (if applicable) at all stages of an investigation. To aid the investigation and reporting process it is vital that all discussions are documented.
- 5.3 The mechanism for providing updates to everyone directly or indirectly affected by the investigation must be formally agreed at the start of the investigation and will in part depend on the type and the severity of the event.
- 5.4 At the start of an investigation, all affected parties will be informed under which policy the investigation is being conducted and the potential gravity of the incident being investigated e.g. allegation constituting gross misconduct could lead to dismissal.

### **Principles of an Investigation**

- 5.5 Investigations should:
  - Be impartial, objective and underpinned by openness and transparency;
  - Be carried out promptly;
  - Incorporate relevant documentary evidence;
  - Incorporate witness statements from all relevant parties;
  - Set out established facts;
  - Highlight any conflicts in evidence collated;
  - Draw logical conclusions on conflicting evidence on the standard of “balance of probability”;
  - Results in a report that draws logical conclusion based on the evidence collated.

### **Terms of Reference**

- 5.6 A Terms of Reference (ToR) will be developed to capture the key objectives of the investigation. To enable the process to be truly transparent the ToR will be shared with all parties to ensure clarity of the allegations at the point of issue.

## **Timescales**

- 5.7 It is not possible to be prescriptive about the time taken to complete an internal investigation however investigations should aim to be completed within 8 weeks of the Terms of Reference being issued. A review meeting should be set at the outset of the investigation for one week prior to the anticipated close.
- 5.8 This meeting will involve the Investigating Officer and Commissioning Manager and will be supported by the Employee Relations Advisor. Should the investigation not be able to close at the anticipated time, a formal extension with further review date can be agreed by the Commissioning Manager at this meeting and communicated to the member of staff.
- 5.9 Staff involved in the investigation process should be given 7 calendar days' notice of the requirement to attend any investigations meeting to allow appropriate time to prepare and participate in the interview process. Managers are expected to facilitate the release of staff with the workplace for such meetings.
- 5.10 The Head of Employee Relations may call case management meetings to discuss delays to any investigation and suggest any actions to resolve impediments to the progress of a case.

## **Notification of an Investigation**

- 5.11 The member(s) of staff who is the subject of an investigation will be informed in writing by the Commissioning Manager that an investigation is to be carried out and the allegations relating to the investigation clearly stated. All other staff to be interviewed as part of an investigation will be given reasonable details relating to the reasons for the investigation when invited to interview.

## **Representation**

- 5.12 A member of staff, who is the subject of, an investigation, has the right to be accompanied by a recognised Trade Union representative or a work colleague (independent of the investigation e.g. not a relative) at interviews and meetings held as part of the investigation.

## **Meetings**

- 5.13 A non-verbatim written record in the form of summary notes will be made of all interviews undertaken to inform the investigation, and this will be supported by a digital recording a copy of which will be available on request.
- 5.14 Interviewees will be provided with a typed copy of the non-verbatim notes within 10 calendar days of the meeting to comment on the content prior to signing the document. Signing of notes must be completed and returned within 7 calendar days. The signing of the document will confirm the accuracy of the content.
- 5.15 It is a reasonable expectation for all staff to respond, participate in and cooperate with any investigation into an incident which they may have been involved in.

- 5.16 Where an individual fails to respond, the Investigating Officer may proceed on the basis of the information available. In addition, any failure to attend an investigation meeting or to co-operate with an investigation without a valid reason may lead to disciplinary action.

## **6 Workforce Investigation Procedure**

- 6.1 All investigations will be conducted in accordance with the agreed case plan. The investigation should be structured into four (4) stages:
1. Planning;
  2. Gathering Evidence/Facts;
  3. Evaluating/Analysis;
  4. Reporting.

### **Planning**

#### **Terms of Reference**

- 6.2 The initial stage of the investigation is to review events and aspects which have led to the consideration of commissioning an investigation and to have agreement of what is going to be investigated. The Commissioning Manager and the Employee Relations Advisor will analyse the complaint or allegation to identify the core elements that require investigation; these will form the Terms of Reference for the investigation
- 6.3 The Commissioning Manager with the support of the Employee Relations Advisor should be clear at this point under which Trust Policy the investigation will be undertaken.
- 6.4 The Terms of Reference should be shared with the individuals against whom the complaint or allegations have been made.
- 6.5 The Terms of Reference will enable the Investigating Officer to indicate which witnesses will need to be interviewed during the investigation. This will be an initial indication and further consideration may be necessary to include further witnesses as the investigation progresses.
- 6.6 The Terms of Reference is a working document and therefore it may be appropriate to amend it during the investigation. If changes are required, revised copy of the Terms of Reference will be issued to the individuals against whom the complaint or allegations have been made and their representative (if applicable) within 7 working day of any changes.
- 6.7 The individual(s) concerned will always be informed in writing that an investigation is to be carried out and the subject and / or allegations of the investigation clearly stated. All witnesses to be interviewed as part of an investigation will be given details of the reasons for the investigation when invited to interview.

### **Sickness Absence during an Investigation**

- 6.8 Where a member of staff is absent from work through sickness Employee Relations Advisor will routinely seek advice from the Occupational Health to assess the fitness of the member of staff to participate in the investigation.
- 6.9 Where a member of staff is considered unfit to be interviewed the member of staff may submit a written statement in response to questions from the investigator. Where the member of staff is unfit to be interviewed or give a statement, the Investigating Officer will make a decision as to whether the process can continue in the absence of that individual(s) and advise the Commissioning Manager of this.
- 6.10 It is important that an investigation is not unreasonably delayed on the grounds of an absence; however consideration should always be given to an individual's health and wellbeing and Occupational Health advice sought where appropriate.

### **Representation**

- 6.11 A member of staff, who is the subject of, an investigation, may be accompanied by their Trade Union representative or a work colleague (independent of the investigation e.g. not a relative) at interviews and meetings held as part of the investigation. The individual will be given 7 calendar days' notice of the meeting. The member of staff is responsible for organising any representation and advising the appropriate person of the date, time and venue of the meeting.

### **Gathering Evidence/Facts**

#### **Interviews**

- 6.12 Interviews are individual meetings between the Investigating Officer and key people involved with the issue under investigation; as such they are a vital part of an investigation. Interviews will usually take place with the complainant, individual witnesses and the alleged perpetrator. The purpose of each interview will be to explore the allegations within the scope of the Terms of Reference, the approach should be designed to ascertain the facts surrounding the issues and interrogate any issues associated to the allegations.
- 6.13 It will be necessary to meet with the complainant; key witnesses and the alleged perpetrator once the Terms of Reference have been agreed. Consideration should be given to a systematic approach to undertaking interviews, a sequence in approach should be established to ensure as much relevant evidence as possible is gathered in a methodical way. The Investigating Officer should consider an appropriate approach to questioning. The objective of the questions should be to gain as much information as possible; open questions should be used with follow up questions to ensure the topic is covered. This may require a departure from scripted questions to ensure comprehensive evidence is collected to support the investigation.
- 6.14 The Investigating Officer will be responsible for ensuring that during an interview staff are given every opportunity to respond to questions, provide

factual information and state their views on the circumstances, taking into account the nature of the matter under investigation. In the event that an individual fails to respond, the Investigating Officer will proceed on the basis of the information available. Failure to co-operate with an investigation without a valid reason may lead to disciplinary action.

- 6.15 Each interview should be documented in the form of written non-verbatim notes. When notes/records of the interview are taken, the interviewees will have the opportunity to review, accept and sign the notes, again having the opportunity to amend it. The time-frame for the return of notes is 7 calendar days.
- 6.16 When scheduling interviews, consideration should be given to an appropriate venue. A private location such as a meeting room or individual office is necessary to maintain confidentiality and enable a thorough investigation of the issues presented.
- 6.17 The logistical details of all interviews should be confirmed in writing in advance to each individual interviewee. The letter should contain details of time, location, and who will be present during the interview. The letter will highlight any rights to representation and give at least 7 calendar days' notice.
- 6.18 If a statement is made during an interview that could highlight further concerns regarding the allegations, follow up questions should be asked to ensure a comprehensive investigation is completed.
- 6.19 If during the course of investigation, additional issues or lines of enquiry are introduced, the Investigating Officer may want to seek guidance from the Commissioning Manager in relation to broadening the Terms of Reference. The Commissioning Manager should discuss any additions to the Terms of Reference with the Employee Relations Advisor.

### **Statements**

- 6.20 A statement is a written, structured response to specific questions raised by the Investigating Officer; it is a document that can be used as evidence within the investigation. When considering the Terms of Reference, the Investigating Officer will form a view of which witnesses would be appropriate to submit a statement. This decision sits with the Investigating Officer.
- 6.21 A member of staff who makes a statement as part of an investigation will be required to sign and date the statement as a true record.
- 6.22 All references made to patients within a statement should be anonymised, for example abbreviations such as Mr X/Miss X should be used within the statement.

### **Documentary evidence**

- 6.23 Throughout the investigation, the Investigating Officer may request evidence from witnesses or divisions and/or directorates for any forms of evidence either electronically or otherwise held.
- 6.24 The evidence could be from a number of sources including paper documents, patient records, letters, email records, supervision notes, one to one meeting records, copies of electronic diaries, CCTV, meeting minutes or agendas. This list is not exhaustive and other sources of evidence can be requested and should be provided as requested.
- 6.25 Wherever possible, witnesses should bring copies of any evidence that they intend to reference during an investigation interview.
- 6.26 Evidence should be collated systematically throughout the investigation to support the Investigating Officer during the evaluation and analysis aspects of the investigation.

### **Confidentiality**

- 6.27 All members of staff involved with the Investigation process must maintain confidentiality throughout the process and must not discuss the matter with any other member of staff. All evidence gathered will be held confidentially.

### **Evaluating/ Analysis**

- 6.28 On completion of the interviews and the evidence has been gathered, the Investigating Officer should commence the process of analysing and evaluating the evidence against the allegations. The Terms of Reference should give the Investigating Officer a structure to support this analysis and reach logical conclusions. In addition the specific policy within which the investigation has been undertaken can add further guidance.
- 6.29 The process of review and analysis will support the Investigating Officer to determine if there are any gaps or evidence missing within the investigation. If this occurs the Investigating Officer may re-interview specific witnesses to seek points of clarification or may consider requesting an additional statement to ensure all areas of investigation have been covered.
- 6.30 Whilst carrying out the evaluation process any conflicts in evidence need to be highlighted and presented within the Investigation Report.
- 6.31 Logical conclusions should be based on the information provided and the evidence gathered. Conclusions should be based on objective consideration of the facts and not on the Investigating Officer's personal opinions. Guidance relating to any employment law issues should be provided by the Employee Relations Advisor.
- 6.32 However there may be occasions when it is not possible to arrive at a definitive conclusion. In this case, the Investigating Officer must exercise the

standard of “balance of probability” to reach a conclusion. This should be reflected in the Investigation Report.

### **Reporting**

- 6.33 Once the investigation and evaluation stages have been concluded a summary of findings should be prepared in the form of an investigation report. The report should be structured to include:
- A summary of the allegation;
  - Evidence;
  - Findings of facts;
  - Conclusions, and the rationale for reaching the conclusion;
  - Background documents (e.g. statements, notes of meetings, evidence presented).
- 6.34 Writing the report offers the Investigating Officer an opportunity to consolidate the evidence that has been presented and review the logical conclusions that have been reached.
- 6.35 The main body of the report should be structured around each Terms of Reference. The findings relating to each Terms of Reference should be summarised and the related facts presented. Factual evidence should be supported in the form of direct quotations from interview notes and references to documentary evidence. A conclusion should be drawn and the rationale discussed.
- 6.36 The report should contain a general conclusion in which the Investigating Officer outlines whether the allegations within the Terms of Reference have been substantiated.
- 6.37 All evidence referenced within the investigation report should be attached as appendices.
- 6.38 On completion, the report should be provided to the Commissioning Manager and a copy sent to the Employee Relations Advisor supporting the case. In cases of potential gross misconduct the report should be reviewed by the Employee Relations Advisor for appropriate employment law guidance, in advance of review by the Commissioning Manager.
- 6.39 Following completion of the investigation, the Investigation Officer should write to inform the member of staff that the investigation report has been completed and has been forwarded to the Commissioning Manager.

### **Potential Outcomes of an Investigation**

- 6.40 On receipt of the investigation report, the Commissioning Manager will consider all the facts and the evidence presented and makes a decision on what action is required. In all cases, the Commissioning Manager will refer to the policy under which the investigation has been undertaken as guidance on how to progress. In the case of a fact finding investigation, which has been used to determine facts to inform actions, the Commissioning Manager with the support of

the Employee Relations Advisor will determine whether informal action or a further more formal investigation is required under a specific policy.

- 6.41 If the Commissioning Manager believes that formal action is required e.g. invoking a formal procedure, then this decision must be referred to a Fair Treatment Panel which will consist of the Head of Employee Relations or a Deputy, a Site Associate Director for HR and where appropriate a senior clinical or operational lead. The panel will review the investigation for equity and any formal action for parity and fairness. The panel will either confirm the formal action or make alternate recommendations. If the decision to proceed to a hearing is confirmed, the hearing should be arranged within 10 calendar days of notification of the panel decision.
- 6.42 If the Commissioning Manager does not believe that formal action is required, individual meetings will be arranged with the complainant and the member of staff who was the subject of the allegations or concerns, to feedback on the findings from the investigation. This will be done within 7 calendar days from receipt of the investigation report.
- 6.43 If the Commissioning Manager decides to progress to a formal hearing and this is confirmed by the Fair Treatment panel, the Investigating Officer will be required to attend.
- 6.44 Investigation reports can be used in a number of forums, disciplinary hearings, appeal hearings and Employment Tribunals as evidence of a fair and robust process.
- 6.45 Investigations present the Trust with opportunities to learn. The outcome of the investigation may provide an appropriate source of learning and direction to prevent a re-occurrence of an incident or to address areas for improvement.
- 6.46 If after investigation, a complaint is found to be malicious disciplinary action may be taken.

### **Support**

- 6.47 The Trust will endeavour to support all parties to an investigation including staff, patients, carers and relatives if appropriate during the investigation process. The exact nature of the mechanisms used will be partly dependent on the type and severity of the incident and the needs of the individuals involved.
- 6.48 Dependent on the nature of the investigation, it is recognised that the process can have a detrimental effect on team dynamics and working relationships, support should be offered to the individuals involved in the investigation process and signposting to access the appropriate resource.
- 6.49 As appropriate, staff will be offered access to:
- Advice from their managers
  - Consult with their Trade Union and/or Professional Body
  - Employee Assistance Programme (EAP)

6.50 Managers should monitor the health and wellbeing of any member of their staff who are involved in an investigation. Any concerns should be discussed with the individual in the first instance and brought to the attention of the appropriate senior manager and related services in the Trust. An Occupational Health referral should be made whenever relevant.

## 7 Policy Review

7.1 The policy and procedures contained within these documents will be in place for three years following approval but may be subject to an earlier review by agreement or should exceptional circumstances arise resulting from this policy; in whole or in part, being insufficient for the purpose intended and/or if there are legislative changes.

## 8 Support

8.1 The Trust has an independent Employee Assistance Programme (EAP) provided by Confidential Care and can be accessed by telephone 0800 085 1376 / 020 7938 0963; or email [assist@cic-eap.co.uk](mailto:assist@cic-eap.co.uk)

8.2 Staff support available at: [www.acas.gov.uk](http://www.acas.gov.uk)

## 9 Training Requirements

9.1 This policy is in immediate effect from its agreement date. Advice and support on the implementation of this policy is available via the Employee Relations Team.

## 10 Monitoring and Audit

10.1 The Employee Relations Team will monitor and analyse data and will use the data to monitor the implementation of the policy and management of cases. In addition, the data will be collated and analysed for information regarding the reasons for the investigations, time taken to carryout investigations and future developments.

10.2 Subsequently, the data will be used to inform and improve policies and to provide recommendations for improving working practices.

Aspect of compliance or effectiveness being monitored	Monitoring Method	Individual department responsible for the monitoring	Frequency of the monitoring activity	Group / Committee / forum which will receive the findings/monitoring report	Committee / individual responsible for ensuring the actions are completed
Workforce Investigations Policy	Trends & Issues	Employee Relations Team	Bi-monthly	ER Meetings	Director of OD and Workforce

## **11 Approval and Implementation**

- 11.1 This policy has been reviewed and approved by the Employee Relations team and will be implemented with immediate effect from its agreement date. This document will be available electronically on the Trust Intranets. Advice and support on the implementation of this policy is available via the Employee Relations Team.

## **12 Equality Impact Assessment**

- 12.1 In order to meet these requirements, an equality impact assessment is used to assess all its policies, procedures and practices. This procedure was found to be compliant with this assessment. (Refer to Appendix 1)

## **13 References**

- Equality Act 2010
- ACAS Code of Conduct
- Maintaining High Professional Standards in the Modern NHS

## Appendix 1: Preliminary Equality Analysis

This assessment relates to: Workforce Investigation/20221

A change in a service to patients		A change to an existing policy		A change to the way staff work	
A new policy	X	Something else (please give details)			
Questions		Answers			
1. What are you proposing to change?		Newly created			
2. Why are you making this change? (What will the change achieve?)		Trust standardisation			
3. Who benefits from this change and how?		Patients and staff			
4. Is anyone likely to suffer any negative impact as a result of this change? If no, please record reasons here and sign and date this assessment. If yes, please complete a full EIA.		No			
5. a) Will you be undertaking any consultation as part of this change? b) If so, with whom?		Yes Refer to pages 1 and 2			

Preliminary analysis completed by:

<b>Name</b>	Samantha Magee	<b>Job Title</b>	Employee Relations Manager	<b>Date</b>	March 2020
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