

Creating Terms of Reference Toolkit (for HR processes)

Version 1.0 (August 2021)

Key Notes:



This toolkit should be read in conjunction with the Disciplinary Policy and the Investigation Toolkit and the Maintaining High Professional Standards (for medical and dental staff)

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1. Introduction

- 1.1. An investigation is a fact-finding exercise designed to gather the relevant information when a complaint or allegation has been made. On completion of an investigation, the Trust will be in a position to fully consider the matter before making a fair and informed decision as to whether formal action needs to be instigated.
- 1.2. It's vital that the investigation process is thorough and just. It is important that the details of what and who is being investigated are identified to allow the investigation process to be effectively planned. The Terms of Reference Toolkit complements the Investigations Toolkit whilst outlining the best practice approach to planning at this stage of the process.
- 1.3 The Case Manager is responsible for creating the Terms of Reference (TOR).

1.4. What are Terms of Reference?

The TOR set out:

- The matters to be investigated
- The name of the person who is investigating: Investigating Officer
- The applicable policy/code
- How the investigation should be conducted
- Those employees who will be involved with the process
- The role of the Investigating Officer
- The timescale of the investigation

1.5 And why are they important?

- Clear TOR allows the Case Manager to plan resources around any disruption caused by the investigation e.g ensuring adequate cover for anyone attending a meeting as a witness. Knowing who is being investigated and the timeline for this will facilitate the management of departmental resources to accommodate this.
- The TOR is provided to the employee who is subject to the process. It is important that the TOR are clear to allow the employee to understand what is being investigated/alleged so as to allow for the preparation of their formal response. Unclear terms could have the potential to cause an employee stress and this needs to be avoided.
- The TOR is provided to the the Investigating Officer. It is important that the terms are clear to allow for a clear understanding of the remit of the Investigating Officer's work, the timescales and the work that has to be undertaken. Clear terms will allow for effectively managed investigations.

2. How to create the Terms of Reference document

The template TOR document as contained in **Appendix 1** should be used.

The Case Manager will have met with HR colleagues with reference to the investigation. The Case Manager will have appointed the Investigating Officer.

We set out below further detail regarding the TOR template.

2.1 Background Information

Background information relevant to the matter(s) being investigated should be provided in this section. This may relate to the specific work of the ward/dept. or a previous investigation. A brief overview of the job and responsibilities of the employee who is subject to the investigation should be provided. Summary details of why the investigation has been commissioned, the allegations/complaints to be investigated (including relevant dates) and the employees involved in the investigation should be outlined. Details on the decision to investigate the matter and who will act as the Investigation Officer should be provided.

2.2 Scope of the Investigation

A vague brief to the Investigating Officer will not suffice. The Investigating Officer must be provided with specific details of what they need to investigate in clear and concise terms.

Examples of allegations are as below:

- Whether on 1 July 2019, the employee, AB, failed to notify their manager, CD, that they were unable to attend the staff briefing event
- Whether when questioned by EF as to why they did not attend, AB shouted at EF and refused to provide a response to their questions
- If so whether this behaviour falls short of the expected standards required as set out under the organisation's values and relevant policies
- Whether on 4 July 2019, following a staff briefing event, AB was subjected to behaviour that was below expected standards as set out in the organisation's values and other relevant documents by GH, IJ, and KL, specifically that AB was aggressively questioned and despite AB stating that they felt intimidated, the questioning continued in the manner it began
- If so, whether this behaviour is defined as bullying and/or harassment as set out in the relevant policy.



HR colleagues can provide support and guidance on identifying the allegations to be investigated.

2.3 Timescales

In the first instance, the Case Manager should refer to the appropriate policy or procedure to check if there are requirements that could dictate timescales that the investigation will follow. If there is no specified timescale then the Case Manager should give a provisional and reasonable timeframe. A complex matter could take several weeks to investigate, or, the Investigating Officer may request additional time to investigate a matter thoroughly (and fairly). Wherever possible investigations should normally be completed within 28 calendar days. (see Investigation Toolkit).



Delays to the investigation process may prejudice both the investigation itself and any further actions that may occur as a result of the investigation findings, so any delays and the reasons for them should be set out in the investigation report.

2.4 Witnesses

The Case Manager should provide an initial list of employees who will need to be interviewed as part of the investigation, including potential witnesses, complainants or others named in the concerns that have been raised. This will not be exhaustive and may develop as the investigation progresses. Consideration should also be given as to whether a patient, who may be the complainant or a witness, should be interviewed.

2.5 Information Sources

The Case Manager should provide a list of the documents that the Investigating Officer should make reference to as part of the investigation. Most commonly, these will include the relevant HR policy/ies and any statements or other evidence (such as emails, notes, letters, photos) already obtained. In some instances this may include confidential patient records and/or CCTV footage for example.

Top Tip

This list will not be exhaustive, and this should be noted. We recommend that you list the documents as per the below table.

Document No.	Description	Date
1	XXXXX	dd/mm/yyyy
2	XXXXXf	dd/mm/yyyy

2.6 Aims of Investigation

The Case Manager should clearly specify that the role of the Investigating Officer is to:

- undertake the investigation
- chair all investigatory meetings/interviews
- deal with any queries or enquiries regarding the investigation
- prepare a report of the findings.

The report should also specify whether there is or is not evidence to substantiate these concerns.

It may also be appropriate for a member of the HR team to support the Investigating Officer providing procedural guidance only, and if this applies, reference should be made to the HR employee in this section of the document. Sometimes an adviser is assigned i.e. someone with technical knowledge of a particular specialism. If this is the case, the name of this person and their role in the investigation should be provided.

All investigations must be conducted in a professional, fair, impartial and timely manner, and it should be made clear within the TOR document that the investigation is not intended to 'build a case' against an individual but to establish facts and findings based on organisational policies. A clear statement should therefore be made in the TOR addressing the importance of confidentiality and discretion, especially as some of the allegations may involve personal issues.

2.7 Confidentiality

It is important to state that all witnesses/interviewees are required to maintain confidentiality at all times to ensure the integrity of the investigation; as such, they must not discuss or share details of the interviews with anyone, including those who are, or who are suspected to be involved, in the investigation in any way. The only exception is the witnesses/interviewees chosen trade union representative or workplace colleague, who are also required to maintain confidentiality. Employees should be reminded that breaches of confidentiality could lead to disciplinary action, irrespective of their seniority within the organisation.

2.8 The Investigation Report

Finally, the Case Manager should specify to the Investigating Officer that the format of the investigation report as provided in the Investigation toolkit be followed within the TOR.

3. Once Completed

Once the TOR have been finalised it should be sent to the Investigating Officer and the employee subject to the process.

4. Amendments to the TOR

During an investigation it may be necessary to amend the TOR. For example, further witnesses may need to be interviewed, further concerns/allegations may come to light or the timescale for the investigation needs to be extended. The Case Manager should confirm the amendments, which should be clearly recorded in the TOR with the date of the amendment and a copy sent to the employee and the Investigating Officer.

TERMS OF REFERENCE FOR INVESTIGATIONS

STRICTLY PRIVATE AND CONFIDENTIAL

Background Information

- Provide background to the scenario.
- Provide summary of the employee subject to the processes' role
- Provide summary details of the particular circumstances around the matter(s) being investigated or allegation(s).
- Provide an outline of the decision to investigate the matter and who will act as the Investigating Officer.

Scope of the Investigation

[list matters to be investigated] e.g. Whether there is evidence that employee A has bullied or harassed employee B in accordance with the definitions as set out in the Trust's Harassment and Bullying Policy

Timescales

The investigation is expected to take [XX] weeks to complete. By this date we will aim to have been completed all interviews and the Investigation Report should be provided to the Case Manager. Any delays will be communicated to all parties and the Case Manager with a new timescale provided.

Witnesses

From the information available at this stage, it may be appropriate for the Investigating Officer to interview the following employees:

[provide the name of employee subject to the process]

[provide the name and job role of any witnesses]

Any other witnesses as identified by the Investigating Officer

Information Sources

[list names of policies, codes]

[list documentation relating to the matter]

Any other information as requested by the Investigating Officer

Document No.	Description	Date
1	XXXXXX	dd/mm/yyyy
2	XXXXXXf	dd/mm/yyyy

Aims of the Investigation

The purpose of the investigation is to consider the allegations/complaints as per these TOR and whether there is evidence to substantiate these concerns.

The investigation will be undertaken in a professional, fair and impartial manner and the Investigating Officer will submit a report to the Case Manager at the end of the process. Detailed findings based on fact and any recommendations for next steps, or observations, should be contained in the report. The report will not make recommendations regarding action concerning employees to be taken.

The Case Manager will review the findings of the investigation and make the decision relating to whether further action will be taken.

Investgating Officer Xxx has been appointed as the investigating officer

If there are any specialist advisors, their name and role should be included.

HR support to the investigation

Detail the name and job title of the HR support

Confidentiality

All parties involved should be reminded of the importance of confidentiality and discretion.

The Investigation Report



The template investigation report as set out in the Invesitigation Toolkit should be used by the Investigating Officer to record the details of the investigation and findings.

[name of Case Manager]

[role title]

[date]

Revisions to Terms of Reference

Date	Revision

Document management

Revision History

Version	Date	Summary of Changes
0.1	May 2021	New toolkit
0.2	July 2021	Revisions following comments from policy sub group