

Manor Hall Academy Trust



Investigation Procedure

Responsibility for monitoring and reviewing this policy lies with the Central Trust Team and Directors. A review of this policy and recommendations for change should be presented to the Directors of the trust for verifications and consulted on with unions.

The Directors of the trust, in line with the Scheme of Delegation and Articles of Association have overall responsibility for the effective operation of MAT policies, but has delegated day to day responsibility to the Headteacher and LAB.

Directors will take account of recommendations from individual schools in review of this policy and seek HR advice as to such revisions.

Consulted with the JCNC	Nov 2022
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Date	Version	Change	Origin of Change	Changed by
Spring 21	2	None	Accepted by Directors	Kstaples
13/10/21	2	Addition of the following sentence in record keeping; Paper work will be retained in line with the data protection policy, Trust Privacy Statements and the record retention schedule	Data Protection	Kstaples
Autumn 2022	3	Amalgamation of all the Trust's policies into one via consultation of the unions.	Unions / Kate Staples / Insight HR / The Key	Kstaples

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1. General Requirements

In order to give effect to the employer's policies and procedures there needs to be a manager in a deciding role. Such a manager is to be known as the 'Deciding Manager'. The Deciding Manager will be determined by the scheme of delegation. The Deciding Manager may be the same as the 'Investigating Manager' within informal stages of the relevant policies that this procedure relates to. The Deciding Manager may consider that a matter is not capable of being dealt with informally and so requires a formal investigation. The purpose of an investigation is to enable the Deciding Manager to establish, as far as possible, the facts behind any grievance, bullying and harassment complaint or disciplinary allegations in order to decide how to progress any issues through the relevant policy.

Any reference to 'the employer' refers to Manor Hall Academy Trust. This procedure applies to employees of the organisation.

The form of investigation will depend on the nature of the allegations and will vary from case to case.

The manager leading the investigation will be referred to as the Investigating Manager for the purposes of this procedure. Investigations must be carried out by managers who have sufficient skills and experience to complete an effective investigation.

Any formal investigation must not be undertaken by anyone who is either a witness to events and/or who will oversee any subsequent proceedings.

Depending on the seriousness of any allegations the investigation may, in straightforward cases, be a short consolidation and chronology of facts or, in more extreme circumstances, necessitate a more detailed inquiry involving the gathering of complex evidence and statements. However, in all cases the Investigating Manager will need to provide enough information so that the Deciding Manager can make a reasonable decision based on reasonable grounds.

Anyone involved in the investigation must be treated fairly, reasonably, and with courtesy and respect. Any investigation must recognise the need for confidentiality.

Employees involved with the investigation are to comply with the employer's equality and diversity principles giving due consideration to any particular needs of those participating which may arise due to cultural, personal, physiological or lawfully protected characteristics or circumstances.

2. Formal Investigations

Where a Deciding Manager initiates a formal investigation, they will identify and arrange for an appropriate person to carry out the investigation but will retain authority for the investigation process at all times. This person will be known as the Investigating Manager. The Investigating Manager can be commissioned externally, either from another school within the Trust or an external agency, by the Deciding Manager.

If a manager undertaking an investigation is unable to continue for unavoidable reasons such as long-term illness or jury service, a substitute must be nominated by the Deciding Manager within **3 working days**. Similarly, where the Deciding Manager becomes unavailable for unavoidable reasons a substitute will be nominated.

Where a Deciding Manager initiates an investigation, they will brief the Investigating Manager on the following points and agree Terms of Reference;

- Why the investigation has been instigated

- Details of any allegations which have been made
- The sequence of events leading up to the investigation
- Whether the colleague has been suspended
- When and how the colleague was made aware of the allegations made against them

The Investigating Manager should:

- Ensure that at all times they treat the investigation as confidential
- Clarify which policy the investigation is being carried out under
- Clarify the issues to be investigated and consider the employer's definitions under the relevant policies e.g., harassment and bullying
- Consider the sequence in which witnesses will be interviewed (including the employee(s) under investigation, if applicable)
- Consider what points actually need to be evidenced or proven
- Consider how a particular witness will contribute to the investigation
- Consider what questions need to be asked to establish appropriate facts
- Consider what other evidence they will need to review
- Arrange a note taker

It is essential to ascertain who has witnessed the events so that facts can be gathered as soon as possible and before memories fade. Any investigation should be commenced within **5 working days** of a decision to instigate the investigation, unless this is not practicable (e.g., due to school closure periods).

Wherever possible, investigations into the allegations or complaint should be completed within **40 working days**. Any delays in completing the investigation must be fully documented and the relevant parties kept informed. Therefore, the nominated Investigating Manager must be able to devote sufficient time to the investigation without being distracted by their primary role. The Deciding Manager will monitor this and take action where necessary, throughout the investigation. Investigation meetings should be held as quickly as possible and without unreasonable delay.

Advice from the Trust's HR provider can be sought by the Deciding Manager/ Investigating Manager regarding procedural matters and relevant documentation.

At the investigation stage, if a complaint or allegation has been made regarding an employee, or where an employee is raising a grievance or a complaint, the employee will be given reasonable opportunity to ask the Investigating Manager to interview relevant and important witnesses and any such request will not be unreasonably denied. They must specify the name of the witness and explain the reason for the request. Where a request is refused the employee may appeal the refusal to the Deciding Manager who will make a determination on the merits of the request. The Investigating Manager will focus on finding witnesses whose evidence will have a specific and direct bearing on the investigation but other than the need to achieve corroboration should avoid multiple witnesses who will not add anything further to the investigation e.g., witnesses who are only going to confirm facts already established.

If there are reasonable grounds to suspect that the potential misconduct or complaint involves fraud, systems abuse, theft, or any financial irregularity, we will notify the internal auditors and/or the police as soon as possible, where appropriate.

If allegations made are anonymous, the action to be taken will depend on the nature and content of the allegations.

Employees must co-operate fully and promptly in any investigation. This will include informing the Investigating Manager of the names of any relevant witnesses, disclosing any relevant documents to them and attending investigative interviews if required.

3. Investigating Allegations regarding Colleagues

The employee under investigation is required to co-operate reasonably, but cannot be compelled to make a statement against their will. An employee who is unfit for work (absent from work due to sickness) is not necessarily unfit to be interviewed and, unless there is medical advice to the contrary, e.g., from Occupational Health, the colleague should co-operate with the investigation.

The investigation process can be stressful to all concerned. Providing appropriate support and/or counselling (if appropriate) should be considered for all parties involved in the investigation process.

Refusal to give a statement must not be viewed as a sign of guilt but the employee must be advised that:

- Unreasonable refusal to co-operate with the investigation may be considered a disciplinary matter
- The investigation will nevertheless proceed but a decision on what further action could be taken may have to be made without them having put forward their case
- Their refusal to give a statement will be recorded as part of the investigation.

The employee subject to an investigation must be given every chance to state their case and, therefore, will be interviewed as part of the investigation (unless for example they have been declared unfit to be interviewed). The Investigating Manager must keep an open mind and not collect only information which supports 'guilt' or 'innocence'; their role is to gather the facts. If there is more than one allegation each should be dealt with separately, as far as possible, and the colleague must be given the opportunity to respond.

There is a right to be accompanied by a fellow worker, a trade union representative or an official employed by a trade union at investigation meetings, including for (potential) witnesses.

Following an interview, it may be necessary to re-interview to clarify issues.

If the employee offers their resignation before the investigation is complete the Deciding Manager must decide whether to continue with the investigation / disciplinary process and if appropriate, take any relevant action.

Following a resignation, there may still be a legal duty for the employer to refer information to the Disclosure and Barring Service – DBS, or Teaching Regulation Agency (TRA) in certain circumstances where they may have been removed from their role, if they had not resigned. Advice will be sought from the Trust's HR provider where these criteria may be met regarding the referral process.

4. Surveillance and/or Monitoring

In extremely exceptional and restricted circumstances, covert surveillance or monitoring may only be considered in order to gather evidence where criminal activity or equivalent malpractice is suspected. Furthermore, it should only be deployed as part of a specific investigation and should cease once the investigation is completed. Other information collected in the course of any such investigation relating to any colleague who is not the subject of the investigation will be disregarded and where feasible deleted.

Covert monitoring will not be used in the workplace generally or specifically in places like toilets and private offices except where there is a reasonable belief based on reasonable grounds that serious crime is occurring and there is an intention to involve the Police.

Prior to undertaking any such surveillance or monitoring, the Deciding Manager must obtain express advice and specific authorisation from Information Governance Unit/HR in line with the employer's procedure and relevant legislation before any covert monitoring can occur.

5. Matters Involving Children and Other Vulnerable People

Where concerns or an allegation relating to a child under 18 involve the possibility of inappropriate behaviour by an adult in a 'position of trust', then an 'initial discussion' should be undertaken with the relevant Local Authority Designated Officer ("LADO")/ Team within 24 hours of the concern or allegation arising. The LADO will advise on 'next steps' including possible suspension; how the matter should be investigated and when and who should be told about the matter. There should be no presumption that the adult should be made aware of the concern/allegation prior to contacting the LADO.

6. Physical Evidence

Documents referred to within the investigatory process, or presented by employees in support of their case, should form appendices to the Investigatory Manager's report. This may include written reports of incidents that might be submitted by witnesses; letters of complaint etc. Other evidence should also be attached as appendices to the report or be readily available for Deciding Manager(s) to review.

7. Record Keeping

During the investigation, the Investigating Manager should keep copies of paperwork and correspondence and, after the investigation is complete, the paperwork should be attached to the personal file of the employee who is under investigation. A copy of any hearing/ outcome letter will be kept on the personnel files of all parties (where applicable). Paperwork will be retained in line with the data protection policy, Trust Privacy Statements and the record retention schedule.

8. Dealing with Witnesses and their Evidence

Witnesses should be interviewed in a quiet place, away from their immediate workplace and where confidentiality can be assured. They should be advised that they will be required to sign the notes of the investigatory meeting as an accurate reflection of the discussion, to form their statement. They must also be advised that their evidence may be shared with the member of staff under investigation and/or their representative and that they could be asked to attend any subsequent hearing where they may be questioned. An [interview template](#) is available. Being interviewed can be stressful and the investigating manager should put witnesses at ease as far as possible and at all times treat the witness with sensitivity and respect.

Evidence is weighted, not counted, unless there is a need to corroborate a particular view there is little purpose including a number of virtually identical statements from different witnesses. If a colleague believes that particular witness evidence is relevant and important to the explanation of their case, this should be communicated to the Investigating Manager and it is for them to determine whether or not a witness statement should be taken.

As far as is possible the Investigating Manager should be clear about what evidence they are trying to establish from a particular witness. However, the exact nature of the evidence may not be known. The investigation should be unbiased, and present facts or highlight where evidence cannot be corroborated.

The Investigating Manager should endeavour to obtain 'best' evidence e.g., first-hand accounts from witnesses. Evidence should be corroborated, where possible, to avoid inconsistencies. Anonymous evidence and hearsay (which relies on what a witness has been told by a third party) may be used but needs to be treated with caution and cannot be relied upon in isolation.

Where anonymous evidence is to be taken the following steps will be necessary. Explore whether the witness had the opportunity and ability to observe clearly what they are asserting and with accuracy. Equally, exploring why such details are memorable. Tactful enquires are needed into whether the anonymous informant has any reason to fabricate their evidence. Witnesses who wish to give anonymous statements should be advised that anonymity cannot be guaranteed if the matter proceeds to a hearing. This is particularly important if the reason for them wishing to remain anonymous is a fear of reprisal or detriment. If a colleague declines to give evidence, the reason should be considered and further advice sought from the Trust's HR provider, before proceeding. In some circumstances refusing to assist in a work-related investigation could be considered misconduct under the Disciplinary Policy; but reasons should be carefully and sensitively explored before this route considered.

Third parties such as contractors or members of the public may be invited to give evidence or make a written statement, but cannot be compelled.

When the Investigating Manager is sure that all relevant questions have been asked, they should ask the witness if there is anything else they wish to say in evidence. The witness must be given sufficient time to read the statement and be offered the opportunity to challenge and clarify the content of the statement. This may be necessary if the Investigating Manager has misunderstood a point the witness had intended to convey. However, if it would represent a radical change to the evidence actually given, the Investigating Manager should leave the evidence as it is but note the witness' concerns and any changes they wish to be made. Their reason for changing their evidence also should be recorded.

On completion of the interview the witness should be told that they must not discuss their evidence/statement with anyone else, particularly other witnesses or the person(s) being investigated. Witnesses that have been put forward by the person under investigation may reasonably discuss their perception of events with them and/or their representative but must not directly communicate the evidence specifically given as part of the investigation.

All witnesses should also be asked to report immediately any approach, directly or through a third party, by the person under investigation to ascertain the nature of, or attempt to influence, their evidence. Any attempt by the person under investigation to intimidate or influence a witness may be regarded as an act of gross misconduct under the Disciplinary Policy.

9. Investigation Report

The Investigating Manager prepares a report confirming the process and findings of their investigation. The report should be in a clear and simple format and be written in plain English. The report should be written in a way that the reader can easily ascertain what has led to the investigation, what the key issues are, what the investigator reviewed and what were the findings.

The report will document what facts the investigating Manager has discovered during the investigation and will include any documents that relate to the finding of any such facts. The Investigating Manager must not speculate or make recommendations about whether a formal hearing should be convened in the case of a disciplinary matter or what disciplinary sanction may be appropriate as these are the functions of the Deciding Manager. In some circumstances, it may be appropriate for the Investigating Manager to feedback wider observations to the Deciding Manager and issues that have arisen as part of an investigation. This may include providing suggestions about what action might be taken for example training, or communications.

If the Investigating Manager feels that there is evidence to indicate that any alleged misconduct has occurred or the complaint could be considered malicious or vexatious, the Investigating Manager will report on their findings explaining why they believe that this has occurred, describing the basis for their belief and referring to any supporting evidence accordingly.

A template is available to structure the investigation report.

10. Arising from the Investigation - What the Deciding Manager Should Consider

Factors which Deciding Manager should consider arising from the investigation include:

- The nature of the alleged misconduct or complaint (if applicable)
- The circumstances, background and context of the issues
- What witness statements reveal
- Whether there are any other facts that can clarify the situation including any relevant written or electronic records, timesheets etc
- The seriousness/effects of the behaviour / action and or its relevance to the colleague's job, team and service delivery
- Whether the alleged conduct or action reflects poorly on or brings the good name of the employer into question
- Whether there are any work-related factors that may have contributed to the behaviour or action such as changes to the team, job or the working environment
- Whether the colleague(s) received appropriate induction, support and training
- Whether there are any personal or underlying factors that might have affected the situation such as illness, disability, domestic or health problems, or provocation
- Whether there are any other mitigating factors
- Whether there have been previous occurrences without any action being taken
- Whether the colleague had been given any authority, on this or a previous occasion, which would lead them reasonably to believe the action or alleged conduct was acceptable.
- What the employer's policy, procedure or guidance provide for
Whether there is or was an established 'custom and practice' prevailing.

Having considered all the above matters, the Deciding Manager will consider whether there is a case to answer or not. The Deciding Manager may conclude that there is insufficient evidence to proceed to a formal hearing or that an appropriate response would be the application of informal counselling or additional training or else may decide to progress the matter to a formal hearing.

11. Investigation Interview Template

Ensure interviews are held in a suitable venue where you can make sure you will not be interrupted.

Introduction

- Introduce yourself and outline your role in the investigation.
- Confirm interviewee details (name, job title, length of time with XXX).
- Note date and time of interview.
- Confirm name of colleague Representative (if XXX does not have a representative, confirm they are aware of their rights to be accompanied and get agreement that they are willing to continue with the interview).
- Describe the investigation Terms of Reference.
- If an account of the interview is to be taken, confirm this to the interviewee and tell them a copy will be sent to them for verification.
- Ask if they have any questions for clarification.

Conducting the Interview/Interview Techniques

- Investigations must be dealt with sympathetically
- The complainant should be interviewed first with the aim of obtaining as much detail about the complaint as possible
- Ensure those attending interviews have been notified and informed of their rights to be accompanied.
- Interview all relevant persons using open (descriptive), closed, hypothetical and probing questions as appropriate.
- Do not lead interviewees or put words "in their mouth".
- Listen carefully to what is being said and do not interrupt when people are speaking
- Attempt to note accurately what is said and probe for clarification.
- Summarise information in chunks to check understanding.
- Repeat what is being said to ensure no misinterpretation.
- Ask for demonstrations and diagrams if appropriate that can aid you getting a full picture.
- Pay attention to detail.

Conclude

- If an account of the interview has been taken by way of a statement, confirm that a copy will be sent to them for verification and signature and when it is expected to be returned. Agree where the statement will be sent to.
- Explain the plan for the investigation through to the target date for submitting the investigation report to the Deciding Manager.
- Explain potential investigation outcomes and any possible consequences for XXX.
- Request not to discuss the content of the interview - outline potential consequences if confidentiality is found to be breached.

- Where the complaint is one of harassment, ask them to say or write the exact words spoken to them or to describe the act of harassment.
- Should any of the interviewees become distressed or aggressive during the interview it should be suspended for a short period or terminated.
- If it's a grievance explore with the complainant what they are seeking by way of an outcome (being careful however not to make any commitments).
- At the end of the interview ask if there is anything in relation to the investigation that the interviewee wants to mention that they have not specifically been asked about.

12. Statement Template

Interviewee Name	
Job Title	
Length of Service/Time in Post	
Companion	
Investigating Manager	
Location of Interview	
Date and Time of Interview	

In opening the interview XXX outlined the following points: -

- Introduction to Investigating Manager and role in the investigation.
- Summary of the reason for the interview
- Confirmation that the interview would be noted and that an account would be provided to XXX to verify its accuracy.

Record of Questions and Responses

Closing

Interview finished at **[insert time]**

The interview was concluded by outlining the following points: -

- The plan for the investigation through to the initial planned date for submission of the report.
- The potential outcomes from the investigation for the interviewee.
- Requested to maintain the confidentiality of the interview.

Please tick and sign as appropriate: -

- I have made amendments on the document and agree that this is an accurate account of the interview.
- I have attached additional comments.
- I agree that this is an accurate account of the interview

Print Name:

Signature:

13. Investigation report template

Date:
Example Investigation Report
Strictly confidential
Date

Prepared by: John Smith – Investigating Manager

1. Background to investigation

- Employee details, job title, previous warnings etc
- Why the investigation was instigated.
- The sequence of events leading up to the investigation.
- Whether the colleague was suspended.
- When and how the colleague was made aware of the allegations made against them.

2. Allegations

Following an investigation and interviews with staff members, the following allegations were raised:

1. Downloading inappropriate material from the internet in core time.

3. Summary of investigation process

- List of who was interviewed and when.
- Refer to relevant appendices.

4. Findings

If the colleague faces more than one allegation, list the findings for each allegation separately.

- Summary of background and context of the allegation.
- What evidence there is to support, dispute or mitigate the allegation.
- Witness statements
- Training records
- Medical assessment/OH or GP records
- Copy of logs / records
- Written documents
- Notes of meetings
- Memos / letters
- Existing procedure
- Any prevailing custom or practice
- The colleague's response to this allegation during your investigatory meetings.
- Whether the colleague admits or denies the allegation.
- If appropriate, whether the colleague has been offered any support; for example, if the allegation is alcohol-related, what support has the employer provided in relation to this problem?

5. Conclusions

List the conclusions of the investigation.

6. Summary & Recommendations

On the balance of probabilities is there a case to answer?

Consider the following questions.

- Are there any key issues that relate directly to the employer (for example, a risk to customers and staff, or loss of money through negligence or deliberate acts)?
- Are there any other warnings outstanding against this colleague (verbal or written)?
- Has the colleague been offered the opportunity to improve their performance through informal support, training and so on? What were the outcomes?
- Are there any medical issues involved? What support have we offered them? What action has been taken, and what was the outcome?
- Are there any key issues that have come out of the investigation that need to be raised in the report, if appropriate?

Example appendices

Appendix 1	Job description
Appendix 2	Letter of suspension
Appendix 3	Witness statement – Anne Brooks
Appendix 4	Notes of meeting with Joe Bloggs