

Framework for the use of External resource for discipline and grievance investigations.

Introduction:

As part of a disciplinary or grievance process it is recognised within the ACAS Code of Practice and Service Policy that a fair procedure is followed. Our procedures are encapsulated within the Disciplinary and Grievance Policies which are aligned to the ACAS Code.

Our policies outline the need for a fair investigation, which in turn will support a fair outcome. Under normal circumstances the investigation will have a Commissioning Manager who will be responsible for the management of the case and will identify an Investigating Officer. This Investigating Officer will be responsible for undertaking a fair investigation and producing a report for the Commissioning Manager to review and decide on the next steps.

It is important that all decisions relating to a case are logged for consistency and transparency purposes.

In some cases, the Service may, consider that an independent/external investigator is commissioned to undertake the investigation. There are benefits to using external investigators, such as providing additional resilience to ensure the investigation can be completed within a reasonable timeline and develop a foundation from which to consider any further action as required. This note outlines when it may be considered appropriate to appoint an external investigator.

Utilising and external resource to undertake investigations can incur additional costs for the Service, therefore they would only be used in exceptional circumstances. The decision for the use of an external investigator would be made by the Strategic Enabler - People, or delegated person as appropriate. An overview of what these circumstances may be are outlined below:

1. Nature of case (highly complex or sensitive)

Where the investigation has the potential to identify significant learning for the wider Service around culture, process, or practise. This may include:

- Anonymous complaints,
- Complaints from the police which have limited information
- Those that may have high levels of sensitivity
- Have a significant impact on the reputation of the Service.
- Where there are multiple employees under investigation and there is a need to interview a significant number of witnesses.

That on assessment of the case the Commissioning Officer identifies specialist knowledge and/or skills are required to carry out the investigation.

2. Timescales

If the complexity of the investigation or availability of suitably trained managers is such that the investigation would not be commenced and completed within a reasonable period and therefore have a detrimental impact on the health and wellbeing of staff involved.

3. Other substantial reason:

If the allegation has the potential, if proven, to result in high value claim against the Service, an external investigation can demonstrate integrity in the process and assist with the defence of any subsequent claim insofar as process is concerned.

4. Principles of Operating Framework:

In addition to the considerations above thought will need to be put in place at the outset of any external investigation, such as:

- Who will be appointed as the external investigator, and this is likely to be guided by the issues to be investigated?
- The use of an external investigator will be by agreement of the SE People or their delegated representative.
- The Commissioning Manager will seek agreement for the use of an external Investigator from the SE People and develop the Terms of Reference, including the rationale for the request to use an external resource.
- The Terms of Reference must clearly set out all relevant information such as the purpose and scope of the investigation and the allegations/issues raised, whether relevant documents are still in existence and who the potential witnesses are and whether they are contactable.
- Any changes to the Terms of Reference remain under the direction of the Commissioning Manager. Any requests for change must be agreed by the Commissioning Manager and shared by way of an update letter and document with the employee under investigation and their trade union representative as appropriate.
- This decision regarding the use of an external investigator will be recorded in the case decision log.
- The content of the Terms of Reference will be shared with the external investigator to ensure the parameters of the investigation are clear to avoid the investigation 'mushrooming' and the investigator exploring issues which are not relevant.