**Conducting a Work Place Investigation**

***Preface***

The following guidance is proposed for Early Years providers to use when they have to undertake investigations following an allegation, which is based upon that provided by ACAS, the Advisory, Conciliation and Arbitration Service, ([www.acas.org.uk](http://www.acas.org.uk)).

ACAS is a free, independent, statutory body (as per the Employment Protection Act 1975).

Please note that while attempts have been made to tailor this guidance to an Early Years setting, all information provided in this document should be treated as guidance only and all settings shall need to refer to their own polices and guidance. In addition, they may need to take HR and legal advice.

**About this guide**

This guide outlines the essential decisions and actions that employers should make when being asked to conduct an investigation.

The guide is both a reference tool for those with experience of investigations and an introduction for those new to investigations.

Employees and their representatives can also use the guide to gain an understanding of how and why investigations should be conducted.

**When to start an investigation?**

When a safeguarding concern has arisen, the setting must inform the LADO immediately by completing a LADO referral form. The setting must also inform Ofsted, the LADO will also liaise directly with Ofsted. The LADO shall consider the referral and consult with the Police. The Police shall then determine whether a criminal investigation is necessary. In instances where a Police investigation is not necessary, the employer shall be given leave by the LADO to conduct their own investigation into the concerns or allegations made. **It is imperative that settings do not begin or undertake an investigation until instructed to do so by the LADO.**

**Informing an employee, they are under investigation**

If an employee is under investigation, the employer is responsible for informing them that an allegation has been made against them, which will need to be investigated.

The employer is responsible to ensure that they give consideration of well-being support to the person subject of the allegation. This is **not** the role of the investigator.

Careful consideration about the timing of sharing the details of the allegation should be given, which will fit with the investigation plan. If in doubt when to share this, speak with the LADO.

**What is an investigation?**

An investigation is a fact-finding exercise to collect all the relevant information on a matter. A properly conducted investigation can enable an employer to fully consider the matter and prepare a report that will inform the final LADO meeting and assist in determining which adjudication decision is the most appropriate.

**The role of an investigator**

The role of an investigator is to be fair and objective so that they can establish the essential facts of the matter and attempt to form a view on what did or did not happen. An investigator should do this by looking for evidence that supports the allegation and evidence that contradicts it.

**Keeping the matter confidential**

An investigation should usually be kept confidential. Even if it becomes known that an investigation is being conducted, the details of the investigation must be kept confidential wherever possible. Keeping the matter confidential can:

• reduce any negative impact to a party involved in the matter

• help to ensure that staff morale is not unnecessarily affected

• reduce the risk of witnesses discussing or agreeing what their evidence should be

In a confidential investigation it is important to explain the need to maintain confidentiality to all staff involved. However, an employee should be allowed to discuss the matter with an employee representative where they have one. It should be made clear that if an employee breaches confidentiality an employer could view this as a disciplinary matter.

The 6 steps below in **‘Stage 1- Planning’** provide an **overview** of the structure and process for carrying out an investigation. Further detail to support the development of an **investigation** follows from ‘**Stage 2 – Preparation’**

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| **STAGE 1 - Planning**  **Step 1: Organisational preparation**   Ensure that you have a clearly defined allegation to be investigated. Ensure that the investigation has clarity around confidentiality and data protection. Please refer to your own policies and procedures.   Choose an appropriate investigator  **Step 2: An investigator’s preparation**  Draft an investigation plan to include a timeframe for completion (in consultation with LADO) The investigation plan will include:   * Identifying who might need to be called to an investigation meeting * Identify what evidence might need to be gathered – and how to get it * Contact parties involved in the matter   **Step 3: Handling an investigation meeting**   Establish who can accompany employees at the meeting   Plan what questions need to be asked   Interview the parties involved and any relevant witnesses, make detailed records of the conversations   Handle reluctant witnesses or refusals to meet appropriately  **Step 4: Gathering evidence**   Arrange and agree witness statements   Collect any relevant written records and documents e.g. timesheets, incident reports, body maps.   Collect any relevant and appropriate physical evidence e.g. CCTV  You will also need to refer to any relevant contraventions of your own policies and procedures.  **Step 5: Writing an investigation report**   Plan the structure of the report (ACAS provide a recommended template, there is also a suggested template at the end of this document)   Report what is likely to have happened – the balance of probabilities   Make recommendations where appropriate  **Step 6: After an investigation is completed**   Submit the report to the LADO. The investigator will attend the final LADO meeting to present the report and participate in the final decision making   Retain the report for an appropriate period of time – as advised by your own HR professional. There is a retention of records framework that the LADO service adhere to with consideration to removing records if the outcome was false, malicious or unfounded.  **STAGE 2 – Preparation**  **Step 1: Organisational preparation**  **What is to be investigated?**  When instigating an investigation, an employer, in consultation with the LADO will decide the precise purpose and scope of the investigation.  Terms of reference should be created that clearly explain what the investigator’s role and responsibilities are for this investigation. Ensure that you have a clearly defined allegation to be investigated. Ensure that the investigation has clarity around confidentiality and data protection. The terms of reference should spell out:   what the investigation is required to examine   consideration to appropriate recommendations   the investigator to provide a written investigative report   The report shall first be shared with the LADO and identified ‘responsible person’ who commissioned the investigation   |  |  |  | | --- | --- | --- | | |  | | --- | | **Why have clear terms of reference?** | | | | Clear terms of reference can… | * help complete the investigation in a timely manner * clarify exactly what the investigator’s remit is * clarify how they should present their findings * ensure all key facts are responsibly investigated * ensure an investigator only collects information and facts relevant to the matter * minimise any negative impact on staff morale caused by investigation meetings * minimise disruption to the organisation’s daily business needs | |

What is most important is that whoever is chosen to be the investigator acts fairly and objectively.

**Keeping the matter confidential**

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• reduce any negative impact to a party involved in the matter

• help to ensure that staff morale is not unnecessarily affected

• reduce the risk of witnesses discussing or agreeing what their evidence should be

In a confidential investigation it is important to explain the need to maintain confidentiality to all staff involved. However, an employee should be allowed to discuss the matter with an employee representative where they have one. It should be made clear that if an employee breaches confidentiality an employer could view this as a disciplinary matter.

**Step 2: An investigator’s preparation**

**How long may an investigation take?**

The employer and the LADO should agree the timescales for the investigation to follow. Clearly it is important that investigations are completed as soon as possible to minimise impact on all concerned and ensure that children are safeguarding throughout.

**Conducting workplace investigations**

Providing a provisional time-frame is helpful but an investigator should not be restricted by a set completion date. An investigator may find that the time-frame needs to be modified to enable them to investigate the matter properly; in such instances the LADO should be consulted. While an investigation should be completed as quickly as is practical, it also needs to be sufficiently thorough to be fair and reasonable. This is particularly important if the matter could result in disciplinary action or legal proceedings. Any delay to the investigation’s conclusion should be explained to those involved and included in the report.

**Choosing an investigator**

Who should be the investigator will often depend on the seriousness and/or complexity of the matter:

 In the majority of cases, where the matter to be investigated appears to be clear and the facts are not in dispute, the role of investigator may be carried out by an appropriate line manager

 If the evidence to be investigated is more serious or complex (such as potential gross misconduct, then, where possible, appointing someone more senior or independent may be beneficial

 In exceptional circumstances, it may be appropriate to appoint someone who is as detached from the matter as is practical, such as an external consultant.

**Questions to consider when choosing an investigator:**

 are they personally involved in the matter being investigated?

 would the appointment raise any conflict of interest concerns?

 are they likely to be influenced by people involved in the matter?

 might they be involved in any subsequent decision making on the matter?

 do they have a good knowledge of the organisation and how it operates?

 what is their availability during the investigation’s provisional time-frame?

 how confident are they at communicating in writing and/or orally?

 what training or support may they require?

**Draft an investigation plan (in conjunction with the LADO)**

Creating an investigation plan can provide an investigator with a structured approach to follow. This can help an investigator focus on:

 what facts need to be established

 what evidence needs to be collected

 completing the investigation within the provisional time-frame

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| An example of an investigation plan… | |
| **Investigator** | Name of |
| Terms of reference | e.g. to investigate the allegation that a worker shouted at a child, pulled them by their wrist and caused them to trip and fall. There are no injuries to the child. |
| Provisional time-frame | Estimated start and finish date. |
| Policies and procedures to review and follow | Early Years Foundation Stage Statutory Guidance  Ofsted Inspection Framework  Allegations procedures against persons in a position of trust who work or volunteer with children (see protocol 8 of the NSCB website). |
| Sources of evidence to be collected | Were there any witnesses to the incident?  Witness statements  Incident reports, body maps, parent notifications etc.  CCTV |
| Persons to be interviewed:  (including planned order of interviews) | Witnesses, relevant individuals in the setting and person subject of the allegation. |
| Investigation meetings further arrangements  (When/where/notes to be taken by) | All parties must be notified of the time, date and setting in which their respective interviews will take place. |
| Persons to supply own statement | 1. You may wish to ask people to complete a written witness statement as an alternative or addition to a face to face interview. 2. The child’s parent (you may wish to explore their understanding of the alleged incident, whether the child has shared any details with them and whether there have been any notable changes in their behaviour. 3. If possible the child should also be spoken to. This will need to be done using a child focused approach, using non-leading questions. With agreement of the LADO it may be necessary to ask more direct questions about the incident. |
| Person subject of the investigation | Once all of the evidence has been collected and collated and all inconsistencies identified the investigator will prepare the interview plan for meeting the person subject of the allegation.  It is worthy of note that eyewitness testimonies may be subject to inevitable discrepancies.  The person subject of the allegation will also be advised to prepare a written statement, which will be shared with the LADO. |
| Investigation meetings to be completed by | Estimated date as agreed with LADO |
| Collection of evidence to have been completed by | Estimated date. |
| Further considerations | i.e. what will the working arrangements for the person subject of the allegation be (i.e. what contact will there be between the person and the alleged victim). |

An investigator should be prepared to modify their investigation plan as and when further evidence comes to light that may be relevant to the investigation.

**Check policies and procedures**

An investigator should collect copies of any policies and procedures that may be relevant to the matter. Even if an investigator is already aware of the policies, they should re-read them to refresh their knowledge and ensure that correct procedures are followed wherever required.

**Identify possible sources of evidence**

There is no exhaustive list that an investigator can rely on to know what sources of evidence they should collect. Each investigation will be different and the facts and information that need to be collected will also differ. When initially identifying what may be relevant an investigator should consider:

 the terms of reference and what they need to establish

 what sources of evidence may be available to establish the facts of the matter

 how the evidence could be collected

 whether there are any time constraints for collecting the evidence, such as a witness going away on annual leave or CCTV records that are usually deleted after X days

As the investigation progresses, other possible sources of evidence may come to light or become relevant.

**Identify possible parties relevant to the investigation**

When individuals might be able to provide information relevant to the investigation, an investigator may interview them and/or ask them to provide a witness statement.

**Deciding in what order evidence should be collected**

The order in which evidence should be collected will change depending on the matter being investigated.

Where the matter is relatively straightforward, an investigator should hold some or all of the investigation meetings at an early stage of the investigation. In particular, if a person made an allegation, or complaint was made, the investigator should interview them first to ensure that are given every opportunity to describe what allegedly happened from their perspective.

The person subject of the allegation should be asked to provide a written statement in response to the allegation made against them if they are aware of the allegation against them at the outset.

Where there is considerable physical or written evidence, or the matter is very complex, an investigator should consider whether to collect other evidence before interviewing the employee or employees under investigation. Doing so may help them to fully understand the matter and help them to ask the appropriate questions at the investigation meeting/interview.

**Arrange where meetings will take place**

An investigation meeting should take place in a private room, where interruptions are unlikely to occur. You may wish to consider convening the interviews off site.

**Inviting relevant parties to an investigation meeting**

An investigator should give any employee that they intend to interview advance written notice of the investigation meeting.

**The invitation should include…**

 the date, time and place of the meeting

 the name of the investigator and what their role is

 the reason for the meeting

 an explanation that the meeting is only to establish the facts of the matter and is not a disciplinary meeting

 a reminder to keep the reason for the meeting, and any discussions that take place, confidential

 whether there is a right to be accompanied to the meeting

 that it may be a disciplinary issue if they unreasonably refuse or fail to attend the investigation meeting

ACAS has developed a range of template letters that an investigator can use and adapt for their own needs at [www.acas.org.uk/templates](http://www.acas.org.uk/templates).

**Keep line managers informed**

Throughout the investigation an investigator should also liaise with any line managers who are responsible for employees attending an investigation meeting whilst respecting confidentiality. Keeping managers informed of arrangements is important. It will allow them to plan ahead and take steps to reduce any impact that the investigation may have on the organisation.

**Step 3: Handling an investigation meeting**

While investigation meetings will mostly be needed, in exceptional circumstances an investigation will only require the collection of written and physical evidence. In these circumstances an investigator will not need to follow this step.

**What is an investigation meeting?**

An investigation meeting is simply an opportunity for an investigator to interview someone who is involved in, or has information on, the matter under investigation.

An investigation meeting must never turn into a disciplinary meeting. Where disciplinary action may be necessary a separate meeting must be arranged under the disciplinary procedures of the organisation.

Can an interviewee be accompanied?

In many cases it will benefit an investigation (and may be work place policy) to allow an interviewee to be accompanied by a workplace colleague or trade union representative.

**Recording an investigation meeting**

The investigator needs to plan how the interview will be recorded. Typically, an investigator may record the meeting themselves or have someone act as a note-taker. The note taker will need to be fully briefed on their role and the boundaries of confidentiality. The note taker should, wherever possible, be impartial to the allegation.

Having a note-taker for the meeting can allow an investigator to focus on exactly what the interviewee says and consider what additional enquiries are necessary to establish the facts of the matter. A note-taker can also be used to read back answers given during the meeting and check that what has been recorded is agreed as being accurate.

**What notes should be taken?**

Notes taken at the meeting will usually become an interviewee’s witness statement. The notes should therefore record:

 the date and place of the interview

 names of all people present

 an accurate record of the interview

 any refusal to answer a question

 the start and finish times, and details of any adjournments

 should be written without gaps, to avoid the accusation that gaps have been filled in after the meeting

* The interview record should be signed by all concerned as an accurate reflection of the interview

The notes taken do not need to record every word that is said but they should accurately capture the key points of any discussion.

**Further information on witness statements is provided in Step 4**

Recording the meeting using an audio device may be done if the organisation’s policy allows it or with the agreement of the interviewee. However, this can unnecessarily complicate the matter. Knowing they are being taped may be intimidating to an interviewee, making them less able to talk openly about the matter. It can also be time consuming because a transcript of the recording will usually need to be typed up so that it can be used as a witness statement.

In some instances, an interviewee may ask to record the meeting. Whether or not a meeting may be recorded is for the employer to decide. To ensure a consistent and fair approach is taken an employer should make its position clear in its policies and procedures.

A covert recording of an investigation meeting may be viewed as a misconduct matter or as a breach of trust and confidence.

**Investigation meetings – the process**

Investigation meetings are often difficult and emotional, especially for someone who made an allegation or is under investigation. A courteous investigator following a structured process, by pre-planning their initial questions, will reduce unnecessary stress and help keep the interview on the right track.

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| During the meeting an investigator should | * ask questions to gather the facts of the matter * probe the interviewee without it being in an adversarial manner * record responses and any refusal to respond * seek evidence that may substantiate the information provided |
| At the end of the meeting an investigator should | * check if there is anything else the interviewee thinks is important before ending the interview * ask if there are other witnesses that they think should be interviewed and why * explain that they may need to be interviewed again * explain that the interviewee will be provided with a copy of their witness statement for them to check and sign to confirm that it is accurate |
| After the meeting an investigator should | * consider what the important facts from the meeting were and whether evidence already collected supports or contradicts these * consider whether the meeting suggested any further evidence needs to be collected or interviews arranged |

Although an investigator should plan to only interview each employee once, as further facts and information are collected, it may become necessary to interview some employees again to clarify certain points.

**Investigation meetings – tips and techniques**

Practicing interview techniques through training and experience is vital for an investigator. While there is no substitute for this, the following tips and techniques will help supplement and refresh an investigator’s knowledge, skills and approaches.

**Listening**

This is the vital part of conducting an investigation meeting. Effective listening will help an investigator get a better understanding of the people they interview and their points of view. Typical actions that an investigator should follow include:

 have a list of pre-planned questions to follow and tick off

 remain focused on the witness and the reasons for the meeting

 concentrate on exactly what the witness says

 be open minded to anything the witness may say

 acknowledge the witness’ viewpoint

 listen for points that the interviewee avoids covering or giving details on

 allow the witness to finish their point before moving the interview on or asking a further question

 use silence to encourage the interviewee to elaborate on points

**Body language**

An investigator should think about their body language and consider how their actions may be perceived. Typical actions that can help to reassure an interviewee that the meeting will be conducted impartially, fairly and professionally include:

 facing the interviewee in a relaxed body posture

 being calm

 not folding arms, which can be intimidatory

 giving an appropriate amount of eye contact

 giving appropriate affirmative facial expressions and gestures, such as nodding

An investigator should be careful to avoid making judgements based on an interviewee’s body language. Where there is some discomfort or unease, an investigator could ask, in a sensitive way, why the interviewee is acting in a particular way, remembering that an interview of this sort can be stressful.

**Questioning techniques**

An investigator should be able to ask questions that challenge and test the credibility of the information being given in a manner that is professional and does not intimidate an interviewee. There are a number of different types of questions an investigator may use during an investigation meeting to help them control the meeting and gather the full facts of the matter from the interviewee.

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| Open questions:  Encourage an interviewee to open up. They can provide a rich source of information that an investigator can then go on to explore in more detail. | For example:   * Explain to me exactly what you saw... * Describe exactly what happened… * Talk me through what you heard… |
| Closed / specific questions:  Usually give a Yes, No or definite answer. They can be helpful to gather specific facts and can help focus an overly talkative interviewee. | For example:   * What time did you leave your workplace? * How many times did that happen? * Did you speak to your manager about that? * Who else was there? |
| Probing questions:  Can test the strength of an interviewee’s account and challenge any inconsistencies. However, it is important to phrase these questions so they are inquisitive rather than interrogative. | For example:   * When you say she was aggressive what exactly do you mean by aggressive? * You mentioned earlier that X… tell me more about that |
| Feelings questions:  Can help to focus an interviewee on what is important to them and reveal their beliefs. However, they should be used sparingly as the meeting is mainly to establish the actual facts of a matter. | For example:   * What was important to you about that? * What is your main concern about what happened? |
| Asking “What else?”:  Helps an investigator to probe deeper beyond the initial information provided. However, care needs to be taken to ask this sensitively. | For example:   * What else can you tell me about what happened? * What else do I need to know about the matter? |
| Summaries:  Provide an opportunity to check that the correct information is recorded. They also allow the interviewee to reflect on what they have said, to correct any inaccuracies and to give further details where there are gaps. | For example:   * So can I clarify that what you are telling me is that you left your workplace at 10am because there was a problem at home, and you did not return to work. Have I got that right? |

**There are some types of questions that can hinder an investigation and should be avoided wherever possible**.

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| Interrogative questions:  The aim of the investigation is to establish the facts rather than interrogate someone. Although sometimes necessary, “Why” questions can make people defensive and close up. | For example:  Instead of “Why did you do that?”, use “What made you decide to do that?” |
| Leading questions:  These can lead the interviewee to provide the answer the investigator hopes or expects to hear. | For example:  Instead of “Do you think he was perhaps over reacting?”, use “What did you think of his reaction?” |
| Multiple questions:  Lead to confusion and the interviewee will answer what they heard first, last or the part they are most comfortable answering. | For example:  Instead of “What is your role, do you like it and why?”, ask each question individually. |

**Reluctant witnesses**

While everybody who works with children should be aware of their responsibility to report and share safeguarding concerns, some employees may be reluctant to provide evidence for an investigation. An investigator should explore why an employee is reluctant to give evidence, provide reassurance and seek to resolve any concerns they have.

An investigator should try to avoid anonymising witness statements whenever possible. This is because an employee under investigation is likely to be disadvantaged when evidence is anonymised as they will not be able to effectively challenge the evidence against them.

Only in exceptional circumstances where a witness has a genuine fear of reprisals should an investigator agree that a witness statement is anonymised. However, if the matter becomes subject to legal proceedings, and it is necessary in the interests of fairness, an employer may be required to disclose the names of any anonymous witnesses.

**Handling a refusal or failure to attend an investigation meeting**

If an employee refuses to attend an investigation meeting, an investigator should try to find out why and see if there is a way to resolve the issue. It may be that they are unable to attend for a legitimate reason, such as illness, and an investigator could rearrange the meeting or ask the employee to produce a witness statement instead.

Where an investigator does not believe a legitimate reason has been given they could remind the employee that failure to attend a meeting may be viewed as refusing to obey a reasonable request and result in disciplinary action.

**Employee relationships and motives**

When interviewing a witness an investigator should be alert to their possible motives. They should make tactful enquiries into the relationship between the witness and any employee involved in the matter because this may add or detract from the validity of the witness’s statement.

Usually, this can be done when interviewing the witness themselves and, where relevant, the person under investigation. However, in some circumstances an investigator may also decide it is necessary to ask other witnesses for their views on the impact a particular relationship might have.

An investigator should be careful about the tone and phrasing of their enquiries and remember that a witness is not under investigation.

**Step 4: Gathering evidence**

When gathering evidence an investigator should remember that their role is to establish the facts of the matter. They should therefore not just consider evidence that supports the allegations but also consider evidence which undermines the allegations. Once collected an investigator should objectively analyse each piece of evidence and consider:

 what does the evidence reveal?

 are there any doubts over the credibility and reliability of the evidence?

 is the evidence supported or contradicted by evidence already collected?

 does it suggest any further evidence should be collected?

**If new safeguarding issues come to light**

If a new safeguarding matter comes to light during an investigation, the investigator **must** inform the LADO and the ‘responsible person’ who commissioned the investigation. These new issues then become part of the investigation. The LADO will consider whether these are safeguarding issues that need to be referred to the Police.

**Witness statements**

A witness statement will usually be a signed copy of the notes from an investigation meeting. An interviewee should be given a copy of their statement taken at the investigation meeting to check that they agree it is accurate. This should be done as soon as possible after the meeting so that memories are still fresh. Once the interviewee has checked the document they should sign the statement confirming it is an accurate reflection of the conversation.

An investigator may want a witness statement to be typed up. However, when the original notes from the meeting are clear they could be given to the interviewee immediately after the meeting.

An interviewee should be allowed to amend their statement but should sign any amendments they make to the original document. Where changes to the statement are made that an investigator believes contradict what was said at the meeting, it may be necessary to note this and include both the original statement and the amended statement in the report.

If an interviewee refuses to sign their statement, an investigator should try to find out why and resolve the issue. If a resolution cannot be reached, an investigator should include the statement in their report while acknowledging that the interviewee refused to confirm that it was an accurate reflection of the meeting.

**When might a statement be provided without a meeting?**

An investigator may sometimes decide that a witness statement can be supplied without a meeting in circumstances such as:

 if a witness is not a worker (i.e. a parent)

 when the facts required from a witness are very simple

 where a witness is ill and unable to attend an investigation meeting

An investigator should provide a reasonable deadline for completion and ask the witness to answer specific questions or to include in their statement:

 their name and, where applicable, job title

 the date, place and time of any relevant issues

 what they saw, heard or know

 the reason why they were able to see, hear or know about the issues

 the date and time of statement

 their signature

**Written records and documents**

An investigator should collect any documentation that may be useful to establish the facts of the matter, such as attendance sheets/records or paper copies of electronic material. These types of documentation can help an investigator corroborate or contradict other evidence collected and can highlight areas that an investigator needs to explore further at an investigation meeting.

**Physical evidence**

There may be physical evidence, such as CCTV or computer and phone records relevant to the investigation, which can be obtained lawfully and without breaching the employee’s employment contract.

If physical evidence is collected, an investigator should document what it is, how it was collected and what it reveals. This can make it easier for an investigator to refer to the evidence at the conclusion of the investigation. Any physical evidence gathered should also be retained in case it needs to be viewed again at a later date.

**Step 5: Writing an investigation report**

Once an investigator believes they have established the facts of the matter as far as is reasonably possible and appropriate, they will usually need to produce an investigation report that explains their findings. While a written report is not always necessary, many investigations will benefit if its findings are recorded in writing.

An investigation report should cover all the facts that were and were not established, and whether there were any mitigating circumstances that also require consideration. To exclude any information may leave an investigation open to accusations of bias and filtering evidence to suit their findings.

The report should reflect the investigator’s own conclusions. While an investigator may seek advice from a third party such as HR, the conclusions should be their own.

**Writing a report – Structure**

A consistent structure to writing each part of the investigation report should ensure that all issues raised in the terms of reference are covered and all of the investigation’s findings are included.

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| An investigation report should include… | |
| Introduction | * Name and job title of the person who authorised the investigation * name and job title of the person who conducted the investigation * a brief overview of the circumstances that led to the investigation * the terms of reference of the investigation and if they were amended |
| Process of the investigation | * How the investigation was conducted * what evidence was collected * whether any pieces of evidence could not be collected and why * names and job titles of all witnesses and why each witness was relevant to the matter * whether any witnesses could not be interviewed and why * where a witness statement has been anonymised explain why and provide any details of enquiry into their character and background |
| The investigation findings | * Summarise the findings from all relevant documents * summarise the key evidence from each witness statement * what facts have been established * what facts have not been established * whether there are any mitigating factors to consider * whether there is any other relevant information to consider |
| Conclusion of report (if required) | Recommendation based on all evidence collected   * any other recommendations related to the matter |
| Supporting documents | Copies of all documents and witness statements collected and referred to in the report should be included and clearly referenced |

**Writing a report – Tips and techniques**

When writing an investigation report an investigator should remember who will read the report once it is completed and that this will often include an employee who raised a grievance or an employee under investigation. The report should therefore:

 be written in an objective style

 avoid nicknames and jargon

 use same form of address for all people referenced

 use appropriate language and keep simple wherever possible

 stick to the facts of the matter

 keep it concise

 explain any acronyms used

 include all evidence that was collected

**Reporting what is likely to have happened**

While reporting with absolute certainty on a matter is desirable it will often not be possible. An investigator should arrange their evidence into:

 Uncontested facts: Where the facts are not in dispute, they can simply be reported as factual

 Contested facts: Where the facts are contested or contradictory they should determine what, on the balance of probabilities, took place (see below)

 Unsubstantiated claims: Where an investigator is unable to substantiate an allegation they should consider if further investigation is reasonable or report that they are unable to draw a conclusion and the reasons for this.

**The balance of probabilities**

An investigator should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. In these circumstances an investigator will need to decide whether, on the balance of probabilities, they could justifiably prefer one version of the matter over another and explain why.

Unlike criminal law, an investigator conducting an employment investigation does not have to find proof beyond all reasonable doubt that the matter took place. An investigator only needs to decide that on the balance of probabilities an incident is more likely to have occurred than not**.**

**Requests to make a recommendation**

It is common for an investigator to be asked to make a recommendation. However, an investigator should restrict their recommendations to only suggesting whether any further action may be necessary or beneficial. In most circumstances an investigator should recommend formal action, informal action or no further action.

An investigator should not suggest a possible sanction or prejudge what the outcome to a final safeguarding LADO Meeting will be.

Formal action recommendation: The formal action an investigator could recommend will usually be:

 to initiate a disciplinary hearing

 changes to an organisation’s policy or procedure

 further investigation into other matters uncovered

Informal action recommendation: The informal action an investigator could recommend will usually be:

 training or coaching for parties involved

 counselling for parties involved

 mediation for parties involved

 notification that further similar action may result in disciplinary action

 lessons to be leant

No further action recommendation: Although an investigator may find there is no further action necessary they could recommend that another form of support may be beneficial to the parties involved and the organisation.

**Step 6 – After an investigation is completed**

The report **must** be submitted to LADO. The investigator will attend the final LADO meeting to present the report and participate in the final decision making. The report will be retained for a period of time - as advised by your own HR professional.

**Further information**

**ACAS learning online:**

ACAS offers free E-Learning on a wide range of topics including, Discipline & Grievance and Conflict Resolution. For more information go to [www.acas.org.uk/elearning](http://www.acas.org.uk/elearning)

**ACAS guidance:**

Code of practice on discipline and grievance

Conducting workplace investigations

Guide on discipline and grievances at work

**Additional support / help**

If an employee is a trade union member, they can seek help and guidance from their trade union representative or equality representative.

**Useful Documentation**

The Children Act, 1989 and 2006

Working Together to Safeguard Children (2018)

Keeping Children Safe in Education (2022)

Guidance for safer working practice for those working with children and young people in educational settings 2015

Managing Allegations Protocol 8.3 and Procedure published on the Norfolk Safeguarding Children’s Partnership website

**INVESTIGATION REPORT TEMPLATE:**

**Name / title of provider/setting:**

**Name and role of the investigator:**

(This should include the name of the investigator, their position in the setting, their experience and their relationship to the alleged perpetrator. For example they will need to clarify whether there are any potential conflicts of interest. It is advisable that the person identified to complete the investigation is as impartial as possible.

**The reason for the investigation**

You will need to detail what you have been asked to investigate – the details of the allegation / concern.

**The investigation methodology employed:**

Provide a brief summary of how the investigation was conducted. You may wish to include start and finish dates, which sources of evidence you referred to (i.e. did you conduct interviews or did you collect written statements, or both), the inclusion of incident reports, body maps etc. You should also comment upon any polices or procedures that have guided your investigation. You will need to identify whether you did speak with parents and/or the child and justify reasons for not consulting with them.

**Details of the person/s under investigation:**

(This should include, name, position, employment history, any previous concerns, specific training that may be relevant to the allegation, DBS details).

**Provide relevant details in respect of the alleged victim/s**

Here you will need to provide a brief description of the child including a reflection of their communication skills/needs etc. You should note any additional needs, e.g., such as disability, new to the setting and still settling in etc.

**The Child and Parents wishes and feelings:**

It is important to ascertain the wishes and feelings of the child and the views of the parent.

**Chronology of events:**

Where possible provide a timeline or chronology of events:

|  |  |
| --- | --- |
| **Date** | **Event** |
|  |  |
|  |  |
|  |  |

**Investigator’s summary**

Here it will be pertinent to identify whether you are able to establish any facts. For example, you may note the person under investigation was present on the day in question and the alleged victim was or was not present on the day in question. You may be able to establish other undisputed facts such as who witnessed the incident.

However, you must also identify areas of dispute. Due to conflicting statements, it may not be possible to establish or agree on what happened. You may also wish to comment upon whether there are any personal circumstances which may or may affect the reliability of the evidence of any particular witness.

**Conclusion and Recommendations:**

This section should outline the investigators analysis of whether there is evidence, or not, to support the allegations. You may wish to comment upon the severity of the allegation and any impact upon the child