Camden and Islington NHS
NHS Foundation Trust

HR INVESTIGATION POLICY AND PROCEDURES

MAY 2019

This policy supersedes all and any previous investigation policies

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Document history

Date	Version	Summary of amendments
Feb 2016	1	New Policy
May 2019	2	Routine review

Membership of the policy development/ review team	HR; Staffside Representatives;
Consultation	Joint Policy Sub Group members Workforce Committee members

DO NOT AMEND THIS DOCUMENT

Further copies of this document can be found on the Foundation Trust intranet.

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1. SCOPE OF POLICY AND PROCEDURE

1.1. The HR Investigation policy and procedure 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. This policy and procedure will apply to all employees of the Camden and Islington NHS Foundation Trust (the 'Trust'), including medical staff, regardless of role, location or contractual status but this HR Investigation Policy and Procedure does not form part of any employee's contract of employment and the Trust may amend it any time.

An investigation will be instigated by a Commissioning Manager in response to:

- Conduct concerns;
- Capability concerns;
- Grievances;
- Allegations of bullying and discrimination;
- Whistleblowing concerns;
- Patient-related incidents.

1.2 The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any allegations and/or concerns raised. The amount of the investigation will depend on the nature of the allegations and/or concerns and will vary from case to case. It may involve interviewing and taking statements from the employee under the investigation and any witnesses and/or reviewing relevant documents.

1.3 It may be appropriate to use evidence gathered during Serious Incident investigations.

1.4 It is considered to be in the Trust and employees mutual benefit that they work in partnership with Staff side. Accordingly, this policy has been developed and agreed by management and Staff side to ensure that staff treatment is consistent and fair.

2. ROLES AND RESPONSIBILITIES

2.1 Managers

2.1.1 Managers will undertake and participate in investigations as necessary and conduct such investigations in a timely manner, ensuring that a thorough investigation report is completed in line with this policy and supported by the Employee Relations Team as necessary.

2.2 Staff

2.2.1. employees must co-operate fully and promptly in any investigations. This will include informing the Investigating Manager of the names of any relevant witnesses, disclosing any relevant documents and attending investigative interviews if required. Please see paragraphs 4.9 and 4.10 below in relation to the right to be accompanied.

2.2.2 It is important that an investigation is not unreasonably delayed on the grounds of an absence; however consideration will be given to an individual's health and wellbeing and the line/investigating manager will seek advice from occupational health practitioner to consider employee fitness to participate in the investigation process.

2.3 Employee Relations Team

2.3.1. The Employee Relations Team is responsible for ensuring that the policy is followed, fairly and consistently and provide advice, support and assistance where required.

2.3.2 To support the Commissioning Manager and Investigating Officer in a timely management of investigation.

2.4 Commissioning Manager

2.4.1 In normal circumstances, the Commissioning Manager will be a manager more senior to the employee's line manager. Although, there may be circumstances where the Commissioning Manager will be an equivalent to the employee's line manager. The Commissioning Manager will be responsible for ensuring that the timescales for this policy are followed and that agreed terms of reference are put to the employee for the purposes of the investigation.

2.4.2 The Commissioning Manager is required to give regard to the following element (not an exhaustive list)

- scope and scale of the investigation
- the nature of the allegations and/or concerns
- the availability of the Investigating Officer to complete the investigation in a timely manner
- the gravity of the allegation and/or concerns and the seniority of the Investigating Officer prior to such appointment being made.

2.4.3 Following the completion of the investigation, the Commissioning Manager will review the investigation report and determine the course of action that will be taken.

2.5 Investigating Officer

2.5.1 The Commissioning Manager will normally appoint an Investigating Officer to undertake a thorough, fair investigation to establish the facts. In nominating an Investigating Officer, consideration will be given as to their seniority, availability, suitability and neutrality. In a limited number of circumstances (e.g. breach of statutory requirement such as professional registration) where not in

dispute with the employee the LM may be able to act as commissioning manager.

2.5.2 If concerns are raised by the member of staff or their Trade Union representative relating to the appropriateness of the Investigating Officer such comments or concerns shall be considered.

2.5.3. The Investigating Officer will interview the individual and relevant witnesses as part of the investigation process to establish facts.

2.5.4 The Investigating Officer will be responsible for ensuring all the appropriate information is gathered and the integrity of the information is preserved whilst ensuring witnesses are not subjected to undue pressure. Further details can be found on in the HR Investigation Toolkit - Template 6 to 11.

2.5.5 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 Employee Relations Team.

2.6 WRES Expert

2.6.1 To promote fairness and consistency in the approach to investigations by working closely with the ER Team on the initial assessment of disciplinary cases.

2.7 Senior Management

2.7.1 To promote fair and consistent approach to investigations by competing pre-investigation assessment in a timely manner.

INVESTIGATION PROCESS

3. STAGE 1: PLANNING

3.1 Terms of Reference

3.1.1 The initial stage of the investigation is to agree what is going to be investigated. The Commissioning Manager and the Investigating Officer will consider the allegation and/or complaint to identify the core elements that require investigation; these will form the Terms of Reference ('TOR') for the investigation.

3.1.2 In investigations under the Grievance and Bullying and Discrimination policies, the Commissioning Manager will review the terms of reference which are determined by the Invesitgating Manager and agreed by the employee. The TOR then will be shared with the complainant, for comment on the allegation and/or complaint to be investigated.

3.1.3 Where appropriate, the TOR will be shared with the individuals against whom the allegations and/or complaint has been made and their Trade Union representative if known.

3.1.4 The TOR will indicate the witnesses that will be interviewed by the Investigation Officer. This is an initial indication and it may be necessary for further witnesses to be interviewed as the investigation progresses. The Commissioning Manager may support the Investigating Officer in this process.

3.1.5 The TOR is a working document and it may be appropriate to amend it during the investigation process. If changes are required, the Investigation Officer must agree the amendments with the Commissioning Manager.. The amended TOR will be issued to the staff member(s) and their representative as required.

3.1.6 All witnesses to be interviewed as part of an investigation will be given relevant details of the reasons for the investigation at the outset. The individual(s) concerned will be informed in writing that an investigation is to be carried out and the matters of the investigation clearly stated.

3.1.7 As an employee, there is a duty to participate in the investigation process by attending requested meetings and providing evidence.

3.1.8 The Investigation Officer is referred to the template example letters (3, 4 and 5), which are contained in the HR Investigation Toolkit.

3.2 Right to be accompanied

3.2.1 Trust recognises that investigations could be a stressful process, and although there is no legal obligation to bring a companion, the Trust allows staff to be accompanied by a workplace collague (employed by the Trust) or a trade union representative. The employee must ensure that there are no delays in the process due to the availability of their companion.

3.2.2 Staff raising Bullying and Discrimination/whistleblowing/grievance concerns are particularly encouraged to bring a union representative.

3.2.3 Witnesses do not have the right to be accompanied at any meetings. In exceptional circumstances a request for a companion may be considered by the Investigation Officer.

4. STAGE 2: GATHERING EVIDENCE/FACTS

4.1 Interviews

4.1.1 Interviews are individual meetings between the Investigating Officer and key people involved with the issue under investigation, the employee and any other individual and/or witness (including the alleged perpetrator) will usually be interviewed. The purpose of each interview will be to explore the allegations

and/or any concerns raised within the scope of the TOR and this policy and procedure.

4.1.2 The Investigating Officer will be responsible for ensuring that during an interview the employee and any other individual and/or witness is 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 as this is seen as a reasonable management request.

4.1.3 Each interview should be documented in the form of written notes, normally taken by the Investigating Officer. In exceptional circumstances where the case is more complex, a digital recorder or note taker may be used. A copy of the recording will be made available at request. When notes/records of the interview are taken, then the interviewees will have the opportunity to review, accept and sign the notes, again having the opportunity to amend it.

4.1.4 Interviews will be scheduled in an appropriate venue for the interview, usually a private location such as a meeting room or individual office in order to maintain confidentiality and enable a thorough investigation of the issues presented. A member of the Employee Relations Team may be present in certain circumstances.

4.1.5 If a statement is made during an interview that could highlight further concerns regarding the allegations and/or concerns, the employee may be asked any relevant follow up questions in order for the investigation to be completed fully as appropriate and at the discretion of the Investigation Officer.

4.1.6 If during the course of investigation, additional issues or lines of enquiry are introduced, the Investigating Officer may seek guidance from the Commissioning Manager in relation to making any necessary amendments to the TOR.

4.1.7 Relevant documentary evidence may be requested and/or can be provided to the Investigation Officer during the interviews if relevant.

4.2 Written Statements

4.2.1 A written statement obtained after an incident may be used as evidence within the investigation.

4.2.2 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, having had the opportunity to amend it or add further information with the agreement of the Investigating Officer.

4.2.3 If a member of staff or patient has provided a written statement and included their name then it is acceptable to make reference to them by name in other

statements. In exceptional circumstances a request for anonymity will be considered.

4.2.4 Any references to patients must be anonymised with abbreviations of Mr X/Miss X for example.

4.3 Confidentiality

4.3.1 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. Failure to maintain confidentially may lead disciplinary action.

5. STAGE 3: EVALUATING/ANALYSIS

5.1 On completion of the interviews and once all the evidence has been gathered, the Investigating Officer will evaluate and analyse the information obtained during the investigation process

5.2 The Investigating Officer may carry out any further interviews at this stage should any further clarification be required.

6. STAGE 4: REPORTING

6.1 Once the investigation and evaluation stages have been concluded an investigation report will be prepared setting out a summary of the fact finding conclusions. The report will include:

- A summary of the allegation/s and/or concerns raised;
- Evidence;
- Findings of facts;
- Conclusions; and the rationale for reaching the conclusion together with details of whether there is a case to answer for any of the TOR.

6.2 All evidence referenced within the investigation report should be attached as appendices.

6.3 On completion, the report will be sent to the Commissioning Manager and a copy sent to the Employee Relations Team.

7. POTENTIAL OUTCOMES OF AN INVESTIGATION

7.1 The Commissioning Manager will consider all the facts and the evidence presented before making any decision on whether there is a case to answer, which will progress (if required) under the relevant policy that forms the basis of the investigation.

7.2 The potential outcomes by the Commissioning Manager are:

- There is a case to answer

The employee will be notified of the outcome by the Commissioning Manager and the Investigation Manager. A formal hearing will be arranged as soon as possible.

- There is no case to answer

Commissioning Manager will write to the relevant parties to inform them that there is no case to answer.

- Informal action

7.3 The Trust believes that investigations allow for 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.

7.4 However, if a complaint is found to be malicious and/or made in breach of the Trust's disciplinary policy it may be appropriate to take formal action against the complainant.

8. SUPPORT

8.1 The Trust will endeavour to support all parties to an investigation including staff, patients, carers and relatives if appropriate during the course of an investigation process.

8.2 Where appropriate, staff will be offered access to:

- advice from their line managers;
- their Trade Union and/or Professional Body;
- a contact in the Employee Relations Team
- Occupational Health and Employee Assistance Programme.

8.3 Managers will monitor the health and wellbeing of any member of their staff who is involved in an investigation. Any concerns will be discussed with the individual in the first instance and then brought to the attention of the appropriate senior manager and related services in the Trust.

9. ASSOCIATED DOCUMENTS

- Bullying & Discrimination Policy
- Grievance Policy
- Disciplinary Policy

- Staff Raising Concerns Policy (Whistleblowing Policy)

10. MONITORING AND AUDIT ARRANGEMENTS

Elements to be monitored	Lead	How trust will monitor compliance	Frequency	Reporting arrangements	Acting on recommendations and Lead(s)	Change in practice and lessons to be shared
Investigation Outcomes	HR	Audit	Quarterly	Workforce Committee/ Equality and Diversity Committee	Required actions will be identified and completed in a specified timeframe	Required changes to practice will be identified and actioned within a specific time frame. A lead member of the team will be identified to take each change forward where appropriate. Lessons will be shared with all the relevant stakeholders

Appendix 1

Equality Impact Assessment Tool

		Yes/No	Comments
1.	**Does the policy/guidance affect one group less or more favourably than another on the basis of:**	No	
	Race	Yes	The introduction of a review of cases by WRES Lead aims at reduction of any potential unequal treatment
	Ethnic origins (including gypsies and travellers)	No	
	Nationality	No	
	Gender	No	
	Culture	No	
	Religion or belief	No	
	Sexual orientation including lesbian, gay and bisexual people	No	
	Age	No	
	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2.	**Is there any evidence that some groups are affected differently?**	No	
3.	**If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?**	N/A	
4.	**Is the impact of the policy/guidance likely to be negative?**	No	
5.	**If so can the impact be avoided?**	N/A	
6.	**What alternatives are there to achieving the policy/guidance without the impact?**	N/A	
7.	**Can we reduce the impact by taking different action?**	N/A	