



# Guide to conducting investigations

**Disclaimer:**

*This document is an informal guideline prepared by Employee Relations to assist in the preparation and management of cases requiring investigation and enquiry.*

*The document has been prepared using an existing guide from the Australian Higher Education Industry Association (AHEIA), titled 'Bryant Award Disciplinary Procedures Manual', 2007. This document is not an official University policy.*

*The investigator objectively and impartially compiles the evidence to establish the facts of what occurred.*

## Initiating the investigation

A preliminary investigation may be instigated by a manager who has had a complaint brought to his or her attention. The complaint may relate to the conduct of a named person, or to a set of circumstances that may indicate improper conduct by a person or persons unknown.

### Assessing the complaint

The manager's first task is to determine the nature of the complaint. Not every complaint requires an investigation. The majority of concerns raised by complainants will be able to be resolved at an informal level by supervisors or managers, or through other internal processes.

Information which relates to improper conduct needs to be assessed to ensure that:

- it is genuine;
- that if correct, it may indicate misconduct or serious misconduct is likely to have occurred.

A decision can then be made as to whether the matter should be investigated.

## Complaints and complainants

Complaints should be made in writing or reduced to writing and verified by the complainant. This does not exclude oral complaints. The person receiving the oral complaint or allegation should however reduce the complaint to writing before forwarding it through the appropriate channels.

It is important to note that, in any investigation (and any subsequent Committee of Inquiry) the role of a complainant is that of a witness to the alleged misconduct. It is the University/investigator, not the complainant who 'drives' the investigation. Care should be taken that complainants are not provided with information regarding an investigation that would otherwise be confidential.

## Role of an investigator

The investigator must *objectively and impartially* compile the *evidence* to establish the *facts* of what occurred.

The role of the investigator is to:

- establish and document the facts;
- report all findings;

It is *not* the investigator's role to draw conclusions as to whether alleged misconduct or serious misconduct occurred.

In fulfilling their role, the investigator will:

- Identify the issues to be investigated. These may be contained in the original complaint or allegation or they may come to the attention of the investigator during the course of the investigation. Any complainant/s will usually be interviewed at this stage. The person who is or may be the subject of the complaint is not necessarily informed of the content of the complaint or allegation at this stage as not all the issues will yet be identified.
- Collect and record and store documentary evidence such as files, computer files, memos, letters, e-mails, photographs, etc.
- Obtain witness versions of events and seek written signed statements from key witnesses.
- In appropriate cases, interview the respondent and document their response or obtain a statement from them. The respondent has the right to be accompanied by a support person during any interview, although it is arguable that any such person must be a staff member (not a practising barrister or solicitor) or union representative.
- Prepare a report containing the findings.
- Forward that report to the Vice-Chancellor or other appropriate person.

### Conflicts of interest

All investigations must be conducted without bias or prejudice.

No one with an actual or perceived conflict of interest should be appointed or remain the investigator. At the outset of any investigation the investigator must be satisfied that there are no conflicts of interest which would make it inappropriate for them to conduct the investigation.

A conflict of interest will arise in circumstances such as where the investigator has a close personal association with the complainant, or the staff member subject of the complaint, or where the investigator has an actual or perceived interest in the outcome of the investigation.

### Maintaining confidentiality

Investigators must abide by confidentiality requirements and must impress upon all witnesses their obligation to keep details of the investigation confidential.

Information gathered should only be divulged to others on a 'need to know' basis.

## Timeframes

A proper investigation will require a combination of thoroughness and immediacy.

While investigation timeframes should not be strict it is important to keep timeframes relevant.

An investigation that is performed hastily may overlook relevant facts and information that may be important in deciding whether allegations should be brought, and vital in later proving those allegations before a Committee of Inquiry.

If an investigation is allowed to become extended, evidence may become less reliable as people move on, memories fade etc. Issues of fairness - to the staff member, the complainant, the witnesses and others - also dictate that any investigation should be conducted as expeditiously as possible.

## Detail required

The level of detail that any investigation report will eventually contain will also vary, according to the circumstances of each case.

While investigation of a matter will normally continue, after allegations have been made, and responded to by the staff member, the investigator should always employ their best efforts to ensure that all evidentiary material relevant to the Vice-Chancellor's decision to bring, or not bring, allegations is brought to the Vice-Chancellor's attention.

## Recording and storing information during an investigation

An investigator's case file should be a complete record of the investigation, documenting all evidence gathered, plus all discussions, phone calls, interviews and decisions made during the course of the investigation. This information should be recorded in chronological order.

A running sheet may be placed on the inside cover of the investigation file to record the chronology of events that take place in the investigation.

Originals of any relevant documentary evidence should be secured.

## Deciding who should be interviewed

All witnesses, or others who may reasonably be able to assist an inquiry, should be interviewed. Those persons who can assist the investigator in establishing the facts of the matter should then be asked to provide written witness statements.

Ideally, the person who is the subject of the possible misconduct/serious misconduct will be interviewed last, after the investigator has collected as much information as possible from other sources. This also minimises the risk of evidence being tampered with or witnesses being intimidated.

In many cases however, issues of fairness will require that the subject of a complaint be informed that an investigation is being conducted, and of the general nature of that investigation. It may be also be necessary to inform the person of the general substance of the allegations prior to he or she being interviewed, while also advising them that, at this preliminary stage of the investigation, disciplinary procedures have not been invoked.

## Witness statements

A witness statement captures, in written form and in logical and sequential order, the relevant information given by the witness to the investigator.

Before giving a statement, witnesses should be advised of the investigation process, their obligation in relation to confidentiality and their possible future involvement in the investigation process, including that they may be asked to give their evidence at any later Committee of Inquiry.

Witnesses do not need to know about sensitive issues which are irrelevant to their recollection of events.

### Taking a witness statement

Witness statements should be detailed and accurate, but contain only relevant information.

To avoid collusion or accusations of collusion, a separate statement should be prepared by every witness to a single event. Joint statements must not be used. A statement made by one witness should not be shown to another.

Statements about events should, as far as possible, specify:

- where the events occurred;
- when the events occurred;
- who else was present;
- what the witness saw.
- what the witness heard.

If a witness states an opinion, the witness should be asked for the basis of that opinion. So, for example, an assertion that a person was 'clearly annoyed' should be supported: 'He was clearly annoyed. He raised his voice and banged his fist on the table.'

Witnesses should not summarise or paraphrase but, where possible, state actual words spoken. If the witness is unsure of the exact words, this should be noted.

- He said: 'that is absolute garbage'; or
- He said words to the effect of: 'that's not true'.

It is imperative to minimise the chance of a witness statement being 'tainted' because of an investigator impliedly or expressly indicating what he or she expects the witness to say. The less the investigator 'leads' the witness with what supposedly happened, the better. Equally, an investigator should beware of putting a witness's statement in to the investigator's words. For example, a witness may state that he or she was not informed of a particular requirement. An investigator may inadvertently reduce this to a similar statement that may in fact be incorrect: 'I had no idea that this was a requirement'.

Equally, an investigator may express a witness statement in a far more formal (or 'legalistic') terms than the witness would themselves use. Either of these mistakes can be fatal in cross examination, when it may appear that the statement is not witness's own version of events, or is otherwise not credible.

### Format of witness statements

As a matter of form:

- Witness statements are expressed in the first person.
- Witness statements should state the name, and the position of the witness, and, where relevant, their relationship to the person who is the subject of allegations.
- Pages of statements should be numbered.
- A witness must read a statement before he / she signs it and confirm to the investigator that it is true and correct.
- The witness should sign the statement below the last section of text.
- If after the witness signs the statement, the witness wants to alter the statement or add something to it; the witness should provide another statement rather than amending the first statement. If the second statement contradicts something in the first statement, the reasons for the contradiction should be explained in the second statement.
- All notes connected with the interview should be preserved and added to the investigation file.
- Witnesses should be provided with their own copy of their statement.

## Preparing an investigation report

At the conclusion of the investigation the investigator will compile his or her investigation report. This should be signed and marked 'confidential'.

### Description of wrongdoing

An investigation report will identify possible misconduct or serious misconduct, detailing the policy, code of conduct or law that is alleged to have been breached and examining the factual circumstances in which that alleged breach occurred.

### The investigation report

The investigation report will include:

- An executive summary or covering memorandum.
- A statement of the relevant facts and evidence.
- Copies of relevant legislation and/or policies.
- Relevant documentary material, including witness statements (or records of interview), emails, etc.

## In summary

In any disciplinary investigation and its outcome, an employee should be extended both substantive and procedural fairness. To prevent the outcome of a disciplinary investigation being found to be biased and unfair and thus overturned:

- Investigators should carry out their role objectively and impartially.
- Investigators must ensure that proper process is followed.
- Evidence should be as complete as is reasonably possible— all available witnesses interviewed and all relevant documentary evidence gathered.
- Investigators must not draw conclusions as to whether rules were breached or whether allegations of misconduct or serious misconduct are made out.

## Witness Statement

### WITNESS STATEMENT OF KYLIE A

I, Kylie Danielle A, will say as follows:

1. I am a PhD student at Z University's School of Computer Science, located in the Faculty of Information Technology, School of Engineering. I commenced my doctorate in March 2004. My research is in the field of multi media and my research supervisor is Professor Morris Y.
2. I first met Dr Y when I was completing my Masters degree in Computer Science at Z University. He was considered by the students to be a bit of a sleaze, in that he often made inappropriate comments about students, and about his staff, such as comments to the effect of: 'It is so much easier teaching female students – easier on the eye, that is', and, referring to his research assistant in terms such as: 'My lovely researcher who, if she plays her cards right, will go a long way.'
3. I nevertheless asked that Dr Y supervise my PhD. This was because Dr Y was generally considered to be the leading authority in multi media, in Australia.
4. During my first discussion with Dr Y about my thesis, he made a couple of inappropriate comments such as: 'Well, I do like my research students to be young and pretty – and preferably female!' I was surprised, but put it to the back of my mind, because I really wanted his support.
5. At the end of that first interview, Dr Y told me he would supervise my thesis, and that he thought we could 'make beautiful research together.' I was thrilled.
6. I arranged to meet Dr Y once a month. These meetings usually took place as night. He told me that, during the day, he was: 'too busy.'
7. At these meetings, I sometimes felt uncomfortable with the way that he would stand very close to me, and constantly touch my arm, but told myself he was just being friendly.
8. After the meeting in the last week of May, he suggested we have a 'bite to eat' so that we could further discuss my work. He took me to Mamas Italian Restaurant near the University. We had spaghetti and a glass of wine each. We discussed my work, and his work and he behaved perfectly appropriately, merely saying, at the end words to the effect of: 'we should do this more often'.
9. At the next meeting, on the 24 June 2004, I went to Dr Y's room at 7.00pm, as arranged. He was having a glass of wine, and asked me if I wanted one too. I refused. I got the impression that he had been drinking more than that one glass. His speech was slightly slurred, and he stumbled as he stood up to greet me.
10. I sat down and started to discuss my work, but he interrupted me. He came up to me, behind my chair. He put his left hand on my upper arm and his right hand on the back of my neck. He asked me if I had a boyfriend. I said: 'yes'. I got out of the chair, and walked to the other side of the room. I told him that it made me uncomfortable when he touched me. I said words to the effect of: 'Please don't touch me like that. It isn't right.'
11. He then came over to where I was standing, grabbed my arm and tried to kiss me. I pulled away from him, quickly gathered my papers and left the room. I did not say anything.
12. The next day, I wrote to the Head of School, and requested a new supervisor. I said the reason for this was 'personal differences'.

- 13. I did not say anything else because I thought that, if I said what had happened, Dr Y could upset my PhD and my plans to teach at Z University. He is very powerful within the Faculty, and the School.
- 14. I have now given this statement because I have been told by human resources staff that the University is investigating complaints of sexual harassment that have been made against Dr Y. I have been asked if I had a 'sexual liaison' with Dr Y. That is not true and I want to set the record straight.
- 15. I never encouraged Dr Y in any way. His approach to me on the night of 24 June was completely unexpected and uninvited.

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Kylie A

Date: ...../...../.....