

GUIDANCE IN CONDUCTING AN INVESTIGATION UNDER THE LEAD EMPLOYER HANDLING CONCERNS POLICY

The investigation must be carried out under the Lead Employer Handling Concerns Policy to gather the facts in a timely manner. It is recommended that the Case Investigator is afforded with a reasonable amount of protected time to undertake an investigation in line with the above timeframes. If the Case Investigator has any difficulties in this respect, or in completing the report within a four week period, Contact should be made with assigned HR Support at the Lead Employer at their earliest convenience who will liaise directly with relevant parties and provide advice accordingly. The Case Investigator is not a 'prosecutor' but rather is an objective investigator tasked with ascertaining the facts relating to what has occurred in a balanced and equitable manner, searching for all the relevant evidence, and not just any evidence that support allegations against the Trainee. The Case Investigator will need to follow the following guidance

- Plan how the investigation is going to be carried out, identifying if there are any potential barriers to obtaining information and how these can be addressed.*
- When interviewing the Trainee he/she is entitled to be accompanied by a trade union or medical defence organisation representative or workplace colleague, friend, partner or spouse but this individual is not entitled to answer the questions that are put to the Trainee on his or her behalf. The Trainee should be written to inviting them to this interview but please remember at all times this is an investigatory interview to ascertain the facts not a disciplinary interview.*
- Prepare interview plan(s) and consider the specific issues that need to be explored during these interviews. Consider the questions that may need to be asked, ensuring that the questioning (open, closed and probing questions) is appropriate e.g. for obtaining information/facts, exploring motivations, feelings or opinions. Avoid using leading questions.*
- Remember that potential witnesses are not entitled to be accompanied* but particularly in sensitive cases, e.g. bullying cases, requests should be sympathetically dealt with.
- Ensure witness statements are signed and dated.*
- Keep a file of all documentary evidence*. In exceptional circumstances there may be a need to collate other physical evidence including photographs/ screenshots / CCTV footage.
- Involve a senior member of the medical or dental staff from outside of the Trust where a question of clinical judgement is raised during the investigation process. Where the allegations or concerns relate to matters of a professional nature, or where the investigation identifies issues of professional conduct, the Case Investigator must obtain appropriate independent professional advice.

- Involve the Lead Employer Health, Work and Well Being Service through the Lead Employer Assistant HR Business Partner contact as previously outlined above, where there is concern that the Trainee's health may have had a significant impact on the events or their actions.
- Remember that dependent on the facts obtained, the Case Investigator may need to ask the Case Manager whether it is possible to obtain details of any relevant past history of similar incidents.
- Where relevant, cross reference the facts obtained against the requirements of the Trainee's contract of employment, the policies of the Lead Employer and/or host organisation and/or Health Education England, the GMC or GDC standards or guidance and the workplace rules in place at the time. Ascertain whether the Trainee could be reasonably expected to know of the requirements of these documents.
- Where relevant, cross reference the facts obtained against information or guidance provided to the Trainee e.g. during their training.
- Ensure that safeguards are in place throughout the investigation so that confidentiality is maintained, particularly, but not exhaustively, in relation to patients.
- Draw up a timeline of events.* This will make the Case Manager's job of presenting the case at any disciplinary hearing far easier, will significantly assist those hearing the case in their understanding of the case and will make your role at any hearing easier.
- Assist the designated Board member in reviewing the progress of the case as required and keep the Case Manager updated with progress.*
- Provide an investigatory report to be submitted for review by the Case Manager to determine whether there is a formal case to answer under the Lead Employer's Handling Concerns Policy. This report will normally include a timeline. Do not make any recommendation as to the action that is required to be taken as this decision lies with the Case Manager.*

NB: The above points marked with an asterisk will apply in all cases but as the investigation progresses the case investigator will need to consider when any other aspect detailed here applies in this case. It is necessary to continually consider the need to amend the investigation plan (and potentially the terms of reference in conjunction with the Case Manager) depending on the findings throughout the investigation.

Arrangements will be provided as required for ongoing confidential support and counselling for the trainee via the Lead Employer's Health Work and Well-Being Department. Should during this process it be identified that further HWWB support is required by the trainee this should be undertaken by requesting a referral to be made via the LE Assistant HR Business Partner (details as outlined above).