



Investigation Policy

1.3

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1. INTRODUCTION

- 1.1. This policy outlines actions to be taken by the manager or a member of staff when a concern arises in relation to staffing issues.
- 1.2. Please refer to Appendix 1 – Policy Route Guidance Flowchart.
- 1.3. These procedures have been agreed with our staff side colleagues.
- 1.4. This policy does not form part of the employee contract of employment, however outcomes following a formal process may then become relevant to an employee's terms and conditions of employment.
- 1.5. This policy may be amended from time to time. SHPCA may also vary any parts of this procedure, including time limits, as appropriate, depending on the circumstances of particular cases.

2. SCOPE

- 2.1. This policy is applicable to all employed staff working within SHPCA, interim (off payroll) workers and volunteers.

3. ROLES AND RESPONSIBILITIES

3.1. Line manager's Responsibilities

- 3.1.1. To ensure that they themselves and employees are aware of this policy.
- 3.1.2. To ensure that the policy and its supporting standards and guidelines are built into local processes and that there is on-going compliance
- 3.1.3. To adhere to the timescales within the policy to ensure that matters are dealt with quickly, reasonably and as fairly as possible
- 3.1.4. To ensure that the informal stage is used wherever possible prior to any formal action being taken
- 3.1.5. To involve the SCW HR business partner/manager for advice and support when an issue has been raised
- 3.1.6. To respond to any concerns raised by employees, consider them fully, sympathetically and fairly in accordance with this policy.
- 3.1.7. To treat all employees fairly by applying the policy consistently and ensuring that any personal information is kept in complete confidence in line with the information governance requirements
- 3.1.8. To adopt the NHS Code of Conduct for Managers October 2002 is adhered to.

3.2. Employee's Responsibilities

- 3.2.1. To ensure they read, understand and comply with this policy
- 3.2.2. To contact SCW HR, their trade union representative or appropriate professional body for advice and guidance

- 3.2.3. To try and deal with matters at the nearest point of origin and where appropriate first approach the manager in order to discuss the problem informally
- 3.2.4. To attend meetings as required
- 3.2.5. To maintain confidentiality.

3.3. SCW HR's Responsibilities

- 3.3.1. To assist managers and employees in the fair and consistent application of the policy
- 3.3.2. To provide advice to employees and managers concerning individual issues, including advice on the range of options or courses of action that may be taken
- 3.3.3. To facilitate informal meetings on request
- 3.3.4. To provide coaching and training to managers on the application of this policy
- 3.3.5. To provide support at formal meetings
- 3.3.6. To provide template letters/documents to managers
- 3.3.7. To maintain confidentiality.

4. OVERVIEW

- 4.1. The purpose of an investigation is to be just and equitable and to help promote fairness, order and consistency in the investigation of allegations made by and against staff.
- 4.2. It is recognised that, wherever possible, issues should be addressed informally with the employee. Where this is not possible, an investigation will be invoked when:
 - 4.2.1. An allegation has been made against an employee that may constitute misconduct or gross misconduct in accordance with Disciplinary action.
 - 4.2.2. An allegation has been made by an employee regarding a Grievance or Bullying and Harassment.

5. THE INVESTIGATION PROCESS

- 5.1. When an incident or complaint gives rise to concern, the Line Manager, head of service or associate director dealing with the complaint or concern, will decide whether to investigate the matter further; this will be done with the support of SCW HR. The purpose of the investigation will be to establish the facts of the case in hand and to ensure that steps are taken to avoid a recurrence.
- 5.2. When the Line Manager in charge decides to investigate, he/she will be required to make the member(s) of staff aware that an investigation is being undertaken with the support of SCW HR. In the first instance the Partnership will consider whether a quiet word or informal action may be all that is required to resolve the matter. Most problems that arise can be settled quickly and without undue process.
- 5.3. The Line Manager or Chief Officer will then appoint an investigating officer. Usually the employees' line manager will be appointed as investigating officer, but in some instances it may be deemed appropriate to appoint an independent manager to investigate the allegations, an example of this would be where allegations have been made against the line manager by the employee.

- 5.4. The investigating officer will be responsible for the investigation stage of this procedure. The role of an investigator is to be fair and objective so that they can establish the essential facts of the matter and reach a conclusion 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.
- 5.5. If an employee has an objection to the investigating officer assigned, they may raise this with SCW HR. It may be deemed appropriate to appoint an independent manager to investigate the allegations, as detailed above.
- 5.6. If there are likely to be understanding or language difficulties during meetings, it may be necessary for an interpreter or friend to be made available. The employee will be responsible for making arrangements for this, or where appropriate, Access to Communications will be contacted with the support of SCW HR
- 5.7. In some instances it may be deemed appropriate for a manager of the same sex and or ethnic origin or other distinction, where appropriate to hear some allegations of harassment made under the Bullying and Harassment Procedure.
- 5.8. The investigating officer will be responsible for contacting SCW HR for support and advice.
- 5.9. The investigating officer will invite the employee to an investigatory meeting by letter which should be hand delivered to the employee, or sent by recorded delivery should it not be possible to give it to them in person. An SCW HR representative will be present at that meeting and the individual will have the right to be accompanied by a trade union representative or workplace colleague. The letter should be given to the employee at least five working days prior to the meeting.
- 5.10. The employee and their representative (if any) should make every effort to attend meetings (including any appeal). If the employee and their representative (if any) cannot attend at the time specified, they should let SHPCA know immediately and SHPCA will seek to agree a reasonable alternative time. SHPCA will look to provide a maximum of two alternative dates/times in the event of the employee and/or representative being unable to attend the first date set so long as it is reasonable and is not more than five working days after the day proposed by SHPCA. This five day limit may be extended by mutual agreement between SHPCA and employee. If the employee fails to attend without good reason, or is persistently unable or unwilling to do so, this may result in the meeting being conducted in the employee's absence and a decision made on the information available. The individual may provide a written statement to the manager holding the meeting.
- 5.11. If the individual is unfit to attend the meeting due to a medical condition, medical advice will be sought from occupational health to determine when they will be fit to attend. If they are unlikely to be fit to attend in a reasonable time, the individual may provide a written statement to the investigating officer holding the meeting.
- 5.12. While it is acknowledged that employees may find procedural action contributes to feelings of stress, this will not normally be a reason for delaying such action.

- 5.13. If the individual is unable to attend the meeting, summary notes of the meeting will be made, which the employee is entitled to receive a copy of. These notes will not be verbatim notes of the meeting but a summary record of discussions.
- 5.14. If the individual attends the investigation meeting, a transcript will be provided to the employee for agreement and signature.
- 5.15. An investigation must be kept confidential at all times. In the event it becomes known that one is being conducted, the details of the investigation will be kept confidential. In a confidential investigation it is important to explain the need to maintain confidentiality to all staff involved. An employee is allowed to discuss the matter with their trade union representative should they have one or a workplace colleague. It must be made clear that if an employee breaches confidentiality at any stage an employer could view this as a disciplinary matter.
- 5.16. Many investigations may be conducted without removing an employee from their typical working environment. On occasions SHPCA may need to consider taking a temporary measure while an investigation is conducted. It may be done with support from SCW HR.
- 5.17. Following the meeting with the employee, the investigation officer will then carry out an investigation which may involve one or more of the following:
 - 5.17.1. Gathering statements from staff, patients or the public who were witness to the allegations
 - 5.17.2. Collating documentary evidence such as staff meeting notes, supervision notes, time sheets, accident/ incident reports
 - 5.17.3. Reviewing CCTV footage
 - 5.17.4. Checking telephone records
 - 5.17.5. Checking IT and computer records
 - 5.17.6. Checking personal records
 - 5.17.7. This list is not exhaustive.
- 5.18. The investigating officer will take care not to:
 - 5.18.1. Jump to any conclusions
 - 5.18.2. Restrict their activities to investigating the facts only
 - 5.18.3. Say or do anything that implies judgement.
- 5.19. The investigating officer will then prepare a report of the investigation.
- 5.20. The purpose of this report is to provide a summary of the allegations and the evidence gathered. The investigating officer is not responsible for deciding the outcome of the investigation but will provide factual summary of evidence only.
- 5.21. The investigating officer is responsible for ensuring that all necessary steps are taken promptly and without any unreasonable delays. The investigating officer would normally be expected to complete the investigation within four weeks.
- 5.22. The investigating officer will submit the completed report to the head of service/associate director to consider what action should be taken. The following decisions may be taken:
 - 5.22.1. There is no case to answer
 - 5.22.2. The matter can be dealt with informally through discussion with the employee.

- 5.22.3. The matter requires formal action.
 - 5.22.4. For matters identified by the employee, a formal response will be made.
- 5.23. The employer will provide the employee with copies of any witness statements and other written evidence that will be referred to in the hearing. The employer reserves the right for the evidence to be redacted, anonymised or withheld only where there is a strong reason for doing so.
- 5.24. Please note that, in conjunction with the Disciplinary Policy SHPCA reserves the right to hold the hearing on the same day as the investigation meeting. This decision will be made following an adjournment to consider the evidence presented and with the agreement of all parties. Please refer to the Disciplinary Policy for details on how to proceed

6. STAFF SIDE REPRESENTATIVES OR COMPANIONS

- 6.1. The employee may, if desired, be accompanied by a trade union official (lay or full time) or a work place colleague. The employee must be informed of this right at the commencement and all subsequent stages of this procedure.
- 6.2. If the employee wishes to be accompanied to a meeting, they should confirm the identity of their representative to us in writing at least two days before any meetings. It is the employee's responsibility to make the necessary arrangements for their representative's attendance at the meetings. The Partnership reserves the right to apply a 'test of reasonableness' regarding representatives to ensure that they would not prejudice the meeting. Reasonableness may be based on for example, prior involvement in aspects of the subject or the availability of representative to accompany (I.e. that meetings are not postponed for long periods in order to wait for the representative to be available).
- 6.3. The representative may:
- 6.3.1. Address the meeting and confer with the employee, during it
 - 6.3.2. Put the employee's case
 - 6.3.3. Sum up the employee's case
 - 6.3.4. Respond on behalf of the employee to any views expressed at the meeting.
- 6.4. The representative may not answer questions on behalf of the employee.
- 6.5. Trade union representatives must be certified as having experience of or received training in acting as a workers companion.
- 6.6. Any other companion (a workplace colleague) should always be a member of SHPCA and any decision on whether the choice of companion is appropriate should be made in conjunction with a member of SCW HR.
- 6.7. Any companion must maintain confidentiality during and after the application of this policy
- 6.8. Electronic recordings of any meetings conducted under this policy will require the consent of all parties.

7. RECORD KEEPING AND CONFIDENTIALITY

- 7.1. A record of the investigation and the outcome to the investigation will remain on the employee's file.
- 7.2. This information will in no way be used against the employee, but is retained for record keeping purposes only in line with the Records Management Policy.
- 7.3. Individuals will be provided with a copy of the notes made from their meetings. Where there is a dispute regarding their inaccuracy, which cannot be resolved, both the original notes and the amended version will be retained on file.
- 7.4. The individual will be provided with a copy of the investigation report. In some circumstances it may be appropriate to withhold some information from the individual, for example in order to protect a witness.
- 7.5. Employees, managers and representatives must ensure confidentiality throughout the procedure cases and thereafter when the resolution has been reached. Failure to do this could result in disciplinary action being taken against the person responsible for the information breach.

8. SUSPENSION (EXCLUSION) OR TRANSFER

- 8.1. There may be occasions when the allegations being considered are of a serious nature to warrant the suspension of the employee. Please refer to the Disciplinary and Suspension Policy.

9. THE ROLE OF COUNTER FRAUD AND THE POLICE

- 9.1. Please refer to the Local Anti-Fraud, Bribery and Corruption Policy.
- 9.2. For any allegation where it is suspected that there may be an element of fraud, SCW HR will notify the Local Counter Fraud Service (LCFS) and/or director of finance who may in turn refer the matter to the Police.
- 9.3. Where it is identified by LCFS that members of staff may be involved in the commission of an offence or offences, the LCFS will liaise with SCW HR at the earliest opportunity. Where legally appropriate the LCFS will make relevant evidence gathered available to SCW HR for use during internal disciplinary proceedings.
- 9.4. Criminal and disciplinary processes have different purposes, different standards of proof, and are governed by different rules. As such, it would not be appropriate for one investigation to cover both criminal and disciplinary matters.
- 9.5. In conducting an investigation, the LCFS investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. There is no requirement under the Police and

Criminal Evidence Act 1984 (PACE) for the investigator to notify the suspect that they are being investigated. At the point that evidence to indicate that an offence has been committed may be identified, the suspect will normally be provided with an opportunity to give an explanation regarding any evidence that has been identified. The investigator will not normally make contact with a suspect prior to this (other than to make arrangements for the interview) to ensure that the investigation process is not prejudiced.

9.6. All relevant parties may be required to participate in separate interviews as part of the counter fraud investigation.

9.7. The investigation carried out by the counter fraud team will run in parallel with the internal HR investigation.

10. INVESTIGATIONS INTO CHILD OR ADULT PROTECTION

10.1. **Management of Allegations against Staff – Child Protection** (children or young people under 18 years of age)

10.2. If it is alleged that an employee of the SHPCA's may have caused harm to a child, or pose a risk of harm to children, it must be responded to and thoroughly addressed. There may be a concern that the member of staff may:

10.2.1. Have behaved in a way that has harmed or may have harmed a child

10.2.2. Possibly committed a criminal offence against or related to a child

10.2.3. Behaved towards a child or children in a way that indicates they are unsuitable to work with children.

10.3. Any allegation should be reported immediately to a designated professional for safeguarding children within SHPCA safeguarding children team. The designated professionals will work with senior managers and provide guidance regarding the safeguarding context of the allegation. It is in everyone's interest to resolve the cases as quickly as possible, consistent with a fair and thorough investigation. Where it appears that a criminal offence may have been committed, the police should be contacted immediately by the appropriate senior manager.

10.4. The Local Authority Designated Officer (LADO) must be informed within one working day of all allegations that come to an employer's attention or that are made to the police regarding an employee of the SHPCA that may have caused harm to a child. It is the responsibility of the chief officer, SCW HR and the designated professionals to ensure the LADO is notified.

11. MANAGEMENT OF ALLEGATIONS AGAINST STAFF – ADULT PROTECTION

11.1.1. In line with the Hampshire Multiagency Safeguarding Adults Policy all concerns, allegations and incidents in relation to a vulnerable adult must be reported immediately to the local authority. An investigation within SHPCA may be directly focused on a safeguarding adult's issue, or a safeguarding adult's issue may arise within another investigation. When a safeguarding adults investigation is required, within statutory

guidance (DH, 2000, No Secrets) the local authority have a duty to co-ordinate the investigation. This may mean that the organisation continues to conduct its own internal investigation, but under the co-ordination of the local authority. Where a crime has been alleged, the Police investigation will always take precedence to prevent contamination of evidence. Again, the safeguarding process under the co-ordination of the local authority will ensure that due process is advised and followed.

11.1.2. Individuals within SHPCA will be expected to be part of safeguarding adults procedures and investigations where this is appropriate and SHPCA support staff attending relevant meetings to ensure full and timely co-operation and partnership working to protect vulnerable adults.

11.1.3. Allegations may be made against a member of staff in their personal lives which involve the abuse/neglect/mistreatment of a vulnerable adult. In such circumstances the Hampshire Multiagency Safeguarding Adults Policy remains the policy to be followed in terms of reporting concerns in the first instance.

12. PROCEEDINGS AGAINST A STAFF SIDE REPRESENTATIVE

12.1.1. In all cases where the manager is investigating an issue against a trade union official the case will be discussed with a branch or full time officer.

13. RAISING A GRIEVANCE DURING AN INVESTIGATION PROCESS

13.1. In exceptional circumstances, where an employee raises a grievance at any stage of the investigation, a decision will be made as to whether the investigation proceedings should be suspended until such time as the grievance is resolved.

13.2. A decision will be made based on the seriousness of the allegations presented which make it clear that it would be inappropriate for the investigation to continue.

13.3. In most cases, the two procedures will run parallel.

13.4. It is not sufficient to raise a grievance with regards to the investigation action itself.

14. EQUALITY AND DIVERSITY

14.1. In applying this policy, SHPCA will have due regard for the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

- 14.2. Where English is not the first language or there are difficulties in reading this policy, employees should contact their line/other appropriate manager or senior officer within their organisation, SCW HR or staff representative for advice and guidance.
- 14.3. If there are likely to be understanding or language difficulties during meetings, it may be necessary for an interpreter or friend to be made available. The employee will be responsible for making arrangements for this, or where appropriate, Access to Communications will be contacted with the support of the relevant SCW HR Business Partner/manager.
- 14.4. In line with SHPCA's policy, an Equality Analysis has been completed. It is understood that no employee will receive less favourable treatment on the grounds of disability, age, sex, race, religion or belief, gender reassignment, pregnancy or maternity, marriage or civil partnership, working patterns or Trade Union membership or non-membership in relation to the application of this policy.

15. POLICY MONITORING AND REVIEW

- 15.1. The effectiveness of this policy will be monitored by the HR team to ensure the correct procedures have been followed and timescales met. Any learning points and trends will be identified by the SCW HR Business Partners who will make recommendations to the SCW HR Director about changes which need to be made. The application and impact assessment of this policy will be monitored by SHPCAs Governance Committee.
- 15.2. This policy may be reviewed at any time at the request of either Staff Side or SHPCA but will be reviewed automatically in the event of new legislation or guidance emerging or annually.
- 15.3. Policy monitoring and review will include analysis of the available equality characteristics of people applicants, interviewees and successful candidates, in order to identify and differential treatment or bias during recruitment. The equality characteristics of leavers will also be monitored.

16. TRAINING IMPLICATIONS

- 16.1. All employees need to be aware of this policy and their responsibilities. This will be achieved by:
 - 16.1.1. New employees will be directed to where policies are located on the SHPCA's website
 - 16.1.2. Promoting the policy through the staff newsletter on publication an each time it is reviewed
 - 16.1.3. Line managers will be provided with coaching and training on the application of this policy.

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18. POLICY MONITORING AND REVIEW

- 18.1. The effectiveness of this policy will be monitored by SCW HR to ensure the correct procedures have been followed and timescales met. Any learning points and trends will be identified by SCW HR who will make recommendations to the Business & HR Services Manager about changes which need to be made. The application and impact assessment of this policy will be monitored by SHPCAs Governance Committee.
- 18.2. This policy may be reviewed at any time at the request of either Staff Side or SHPCA but will be reviewed automatically in the event of new legislation or guidance emerging or annually.
- 18.3. Policy monitoring and review will include analysis of the available equality characteristics of people applicants, interviewees and successful candidates, in order to identify and differential treatment or bias during recruitment. The equality characteristics of leavers will also be monitored.

19. TRAINING IMPLICATIONS

- 19.1. All employees need to be aware of this policy and their responsibilities. This will be achieved by:
 - 19.1.1. New employees will be directed to where policies are located on the SHPCA's website

19.1.2. Promoting the policy through the staff newsletter on publication and each time it is reviewed

19.1.3. Line managers will be provided with coaching and training on the application of this policy.

19.2. This policy is made available to all staff via SHPCA's website at: HR PORTAL

20. APPENDIX 1 POLICY ROUTE GUIDANCE FLOWCHART

