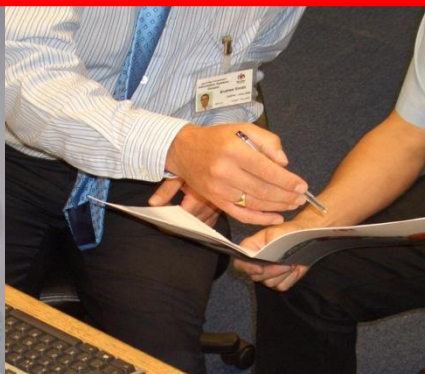




**Isle of Man
Government**

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Office of Human Resources

A Guide for Investigating Officers

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INTRODUCTION:

Where a formal allegation or complaint is made by, or regarding, a member of staff, an Investigating Officer is appointed to establish the facts and ascertain whether or not there is evidence to support the allegation.

Properly conducted Investigations result in better decisions, greater fairness and consistency in the way in which employees are treated. This, in turn, minimises the number of internal appeals and external Tribunal or court claims. Investigations must be undertaken before any hearing is convened.

This booklet provides guidance for all Investigating Officers called upon to undertake an Investigation. If you are appointed to investigate a matter, you are encouraged to read this guide and also seek advice from the Office of Human Resources if necessary.

The first section is a practical guide about how to undertake the Investigation. Additional guidance on the principles relating to Investigations is included in greater detail in the second section of the booklet.

The third section, the Appendices, consists of a number of templates and checklists. The checklists and templates in the Appendices will ensure that your Investigation is complete, consistent and thorough. This is especially important if your report is used in a subsequent Investigation or appeal. It is important to bear in mind when conducting the Investigation and writing the Investigation report that the documentation may be read by another party who has no prior knowledge of the matter. Your materials must therefore be as clear as possible. You can find editable templates online at www.gov.im/hr/ohrforms.xml

In Section 4, some 'Crib Sheets' have been provided to assist you. There is no obligation to use them, but they may help you with the planning and interview stages of your Investigation. You may also find the Practical Investigating Officer Skills training useful. Contact Learning Education and Development or your Business Partner to arrange this.

Finally, a flowchart to illustrate the process is included in Section 5.

Examples of relevant policies may include:

- Disciplinary, Grievance and Capability Policies and Procedures
- Fairness at Work Policy and Guidance
- Confidential Reporting (Whistleblowing) Policy

This list is not exhaustive. Your Department / Division's policies may also apply.

SECTION 1 – THE PROCESS

AN INVESTIGATION IS REQUIRED. WHAT HAPPENS NOW?

Prior to any Investigation commencing, all parties involved should have been informed by the Designated Manager (this is the person who appoints you as the Investigating Officer), in writing, of the details of the allegation, complaint or concern, and that you have been appointed as the Investigating Officer. Ask for a copy of everything that the Designated Manager has already provided to the relevant parties.

When you are appointed as Investigating Officer, the Terms of Reference should be drafted by the Designated Manager and discussed with you. The Terms of Reference set out the allegation or complaint and boundaries of the Investigation. It is important that the Terms of Reference set clear parameters for the Investigation. If you have any queries or concerns in relation to the Terms of Reference, discuss these with the Designated Manager before you commence the Investigation.

If no Terms of Reference have been provided, the respondent must have been advised in writing of the allegation against them and the relevant policies and procedures that apply.

There is a template Terms of Reference at [Appendix 1](#) that you may wish to use and provides details of what information Terms of Reference may include.

More information on Terms of Reference can be found in [Section 2](#).

The Investigation should then be commenced promptly, and completed as soon as reasonably possible. The purpose of the Investigation is to collate relevant information and evidence that supports or refutes an allegation or concern. The process by which this is done is generally to gather the facts and complete a report, summarising whether, based on the evidence collated, there is insufficient/sufficient evidence to support the allegation or complaint.

Top Tip:

- get a ring binder when you have agreed to carry out an Investigation and start logging everything in this
- Keep a timeline of events and correspondence

Investigations must be:

- Thorough
- Structured
- Consistent and fair

- Transparent
- Sensitive to all parties
- Conducted within clearly defined boundaries (as laid out in the Terms of Reference)
- Confidential
- Timely

It cannot be overemphasised how important it is to ensure the Investigation is properly conducted and the report properly written. A 'flawed' investigation can lead to significant problems later on, including the potential overturning of an earlier decision or the loss of a Tribunal case and unnecessary legal and other costs.

PLANNING THE INVESTIGATION

- Establish and confirm which policy, procedure, code or legislation is applicable and ensure that you are familiar with it.
- Make sure you have the time to conduct the Investigation.
- Plan your Investigation meetings using the template provided at [Appendix 3](#).
- Plan where to hold the Investigation meetings – these must be in a private place, free of interruptions.
- Decide which witnesses need to be interviewed and in which order and timetable the interviews. You can meet them more than once, if necessary.
- Maintain the timeline of events/ chronological summary.
- Employees may have the right to be accompanied at the Investigation interview. You should check the relevant policy or procedure and the employee's Terms and Conditions of employment.
- Give consideration to how notes will be taken during the investigatory interviews. Ideally, notes are taken in a consistent manner for all interviews. If you require a note taker, you will need to make arrangements for this. Note takers will only be provided by OHR in exceptional circumstances.
- Decide what documentary evidence is needed e.g. employment records, time sheets, pay slips, travel claims, diaries, training records, accident book, minutes of meetings, reminders/notices, other relevant policies and procedures, job descriptions, terms and conditions, financial regulations etc. You can find a longer list in the [crib sheets](#).
- Timetable writing the report summarising the evidence collated and the witness statements. This can often take the most time to collate. The Investigation Planning Checklist at [Appendix 2](#) will help you.

STARTING THE INVESTIGATION

Contact the complainant and respondent (the person against whom an allegation has been made) in writing, advising them that you have been appointed as the Investigating Officer. The Terms of Reference are generally included with this correspondence to the respondent

(and the complainant in the case of a Fairness at Work Policy and Guidance Investigation), if they have not already been provided to the respondent by the Designated Manager.

If no Terms of Reference have been provided, you must ensure that the respondent has been advised in writing of the allegation against them and the relevant policies and procedures that apply.

A template letter is provided at [Appendix 1a](#). A statement on Confidentiality should also be provided within the Terms of Reference. This will need to be considered on a case by case basis as there are no absolutes or set of rules that govern this. The template Terms of Reference contains a statement on Confidentiality.

Witnesses should only receive the details relevant to their involvement.

Contact the relevant parties to arrange to interview them. Refer to the relevant policies / procedures to establish whether they have a right to be accompanied. Template letters are available at [Appendix 1b](#) and [Appendix 1c](#).

DURING THE INVESTIGATION

Obtain all relevant information including witness statements and other documents or supporting evidence. Ask parties to give their account in their own words. This should be in terms of what they personally witnessed or had involvement in, not third hand views or opinions. Ask them if there is any corroborating evidence to support what they are saying eg., someone else who may have seen the behaviour, a follow up e-mail etc.

Keep it formal. This sends out the message that you are taking the complaint seriously; that you will be fair and that you will apply a consistent and thorough approach throughout the Investigation.

Make sure you interview the complainant, respondent, witnesses and all relevant parties. Interview all parties separately.

You can use the Investigation Planning Matrix at [Appendix 3](#) to help you keep track of who needs to be interviewed.

All parties must be made aware that statements may be shared and made available at any Hearing and they may be called to attend a Hearing if required.

You must inform the Designated Manager immediately if, during your Investigation, you become aware of any financial loss eg theft, fraudulent claims etc because there may be other procedures that you would need to be aware of. The Designated Manager may then need to take appropriate action, which may include discussing the matter with the

Department's Fraud Liaison Officer and OHR. See also the advice on [page 15](#) regarding allegations where the police are involved.

Ensure all other relevant lines of enquiry are followed up eg other witnesses; other relevant background information etc.

Employees are required to co-operate with the Investigation process by giving evidence and/or appearing as a witness. Witnesses will be released from their duties to attend Investigation interviews and hearings, if required.

The objective is to complete a thorough Investigation within as quick a timescale as possible. **It is very important that you maintain communication with all parties to manage expectations.** If the Investigation is delayed or protracted for any reason, it is your responsibility as the Investigating Officer to advise the parties, the Designated Manager and OHR, if appropriate, and keep the parties informed. This may be confirmed in writing to all parties to ensure effective communication has been maintained throughout. You may wish to set up a weekly reminder to contact all parties, even if there is nothing new to report.

THE INVESTIGATION REPORT

Having collated all the evidence, you should compile a report, setting out the facts as conveyed to you by the parties. An Investigation Report Template is included at [Appendix 5a](#) and provides guidance on how a report may be written.

The report should be clear, concise, objective and presented in a logical format so that it makes sense to someone unfamiliar with the case.

Top Tips for Reports

- write in the third person (ie report format);
- refer only to the actual allegation made or concern raised;
- be objective and non-judgemental and include no opinion or feeling;
- conclude only with whether there is sufficient/insufficient evidence to support the allegation or concern

It is recommended that you keep your OHR Adviser / OHR Business Partner updated.

Remember that any parties who are the subject of the Investigation may be sent a copy of the report.

Unless there is a compelling reason for not doing so, you should consider redacting supporting evidence (emails, letters, screen grabs etc) to remove the names of any individuals not directly involved in the investigation, for data protection purposes.

COMPLETION OF THE REPORT

- Submit the report, including signed witness statements and supporting evidence to the Designated Manager.
- If the conclusion of the Designated Manager on receipt of your report is that no further action is to be taken, then your role as Investigating Officer ceases.
- If the conclusion of your report is that there is sufficient evidence to support the allegation or concern, and if a hearing is convened, you will be required to attend the hearing to present your findings and also to answer any questions.

THE HEARING

At the hearing, the respondent will be present together with their work colleague / staff association / trade union representative as well as the Hearing Officer / Panel.

The model procedure for the normal format for a hearing / appeal is included at [Appendix 6](#).

Prior to the hearing, you should:-

- prepare to present your report findings. You can reasonably expect that the parties at the hearing will have read your report and its Appendices as these will have been circulated to all parties, in good time, prior to the hearing itself. You will be presenting the key points from your Investigation.
- ensure you re-familiarise yourself with the content of your Investigation report and the detail in the Appendices. This is particularly important where time may have elapsed between the completion and submission of your report and the hearing itself. You may be required to invite any witnesses that you wish to attend.
- In preparing, you may want to anticipate some questions you could be asked, and prepare a response.

AT THE HEARING:-

- You will be asked to present your report, specifying the allegation(s) or concern(s).
- Witnesses, if called, are only allowed to be present at the hearing for the period when they are asked questions about their statement.
- You will be required to answer questions placed by the respondent, their work colleague / trade union / staff association representative and the Hearing Officer / Panel in relation to your report and the evidence gathered.
- You may also question the respondent following the presentation of their case.
- You will then be invited to sum up the case.
- You (and the respondent / their work colleague / staff association / trade union representative) can seek an adjournment, at any time, during the hearing.

APPEAL HEARINGS AND EMPLOYMENT TRIBUNALS

As the Investigating Officer, you may be required to present the evidence and /or be called as a witness at any subsequent appeal hearing or employment tribunal.

RETENTION OF RECORDS

All paperwork and other documentation and information relating to the Investigation should be sent in confidence to the relevant OHR Business Partner. Paperwork must be retained for a period of 12 months from completion of the Investigation or from the last action taken (for example, in the case of a Disciplinary hearing, Tribunal etc).

SECTION 2 - GUIDANCE

THE TERMS OF REFERENCE

The Terms of Reference will be set by the Designated Manager, and discussed with the Investigating Officer. They set out the scope and limitations of the Investigation. The Investigating Officer will be guided by the Terms of Reference on the specific allegation or concern to investigate, the timescales for the Investigation and the policies and procedures relevant to the Investigation.

Terms of Reference may also identify any areas that should be excluded from the Investigation. This will ensure that the Investigation is focussed on the matter for Investigation and reduces the risk of the Investigating Officer becoming side-tracked by other issues. If, at a later stage, other material comes to light that is pertinent to the Investigation, the Terms of Reference can be updated by the Designated Manager to include this. Refer to the Designated Manager.

If you have any concerns or questions in relation to the Terms of Reference, you must discuss these with the Designated Manager as soon as possible.

The respondent should be given a copy of the Terms of Reference for the Investigation. **If no Terms of Reference have been provided, you must ensure that the respondent has been advised in writing of the allegation against them and the relevant policies and procedures that apply.**

A Template Terms of Reference is set out in [Appendix 1](#).

An acceptable timescale for the Investigation should have been discussed between you and the Designated Manager prior to you commencing the Investigation. The Investigation should be completed as soon as possible and every effort should be taken to minimise delays; however, if this proves unavoidable you must keep all relevant parties regularly updated.

THE INVESTIGATING OFFICER

As the Investigating Officer, you will play an impartial role and have no prior involvement in the matter, no stake or interest in the case or the parties.

You must agree to being appointed as the Investigating Officer.

AS INVESTIGATING OFFICER YOUR ROLE IS TO:

- Investigate the allegation or concern;

- Establish the facts;
- Determine whether the allegation or concern has substance or not;
- Identify the relevant evidence;
- Present your findings – this may include attending a hearing to present your case;
- Keep all parties regularly informed regarding the progress of the Investigation, especially if there will be any delays. It is suggested that you set up a weekly or bi-weekly reminder to update everyone, even if there has been no progress with the Investigation.

AS INVESTIGATING OFFICER YOU **SHOULD NOT**:

- Lead any witnesses or the respondent;
- Express/offer your personal opinion;
- Divulge any information that you may have been given in confidence that does not relate to the TOR of your investigation;
- Ignore any additional evidence or information you are requested to consider/provided with;
- Draw any conclusions until the investigation is completed;
- Make any recommendations as to what the outcome should be.

CONFLICT OF INTEREST

You should declare, at the outset, if there may be a conflict of interest, for example:

- if the matter involves a friend or relative; or
- involves someone with whom you have had previous personal difficulties; or
- if you have had prior involvement in, or are connected in any way to, the matter which has given rise to the allegation or concern.

If you feel that there is any potential for bias or conflicts of interest, or if your impartiality is challenged, you should discuss this with OHR. Sometimes there may be a perception of bias, when this isn't necessarily the case.

GENERAL CONSIDERATIONS REGARDING INVESTIGATIONS

General considerations that you will need to make during the Investigation will include:

- What issues need to be explored?
- What questions need to be asked to get the facts and where are the sources for the answers?
- Who are the witnesses?
- Who is in attendance? If the employee or respondent is unaccompanied, check that they are happy to continue.

Familiarise yourself with the relevant policy/procedure/legislation. It is vital that when carrying out the Investigation, you are familiar with the relevant policies and procedures

that apply. This is important should the matter become the subject of an Employment Tribunal. Cases at Employment Tribunal can often fail on procedural grounds, usually due to an organisation not following its own documented policies and procedures.

CONFIDENTIALITY

Confidentiality during an Investigation is of the utmost importance in order to maintain the integrity of the evidence and the respect of those being investigated. As the Investigating Officer, you should not impart knowledge about the subject of the Investigation, or the Investigation itself, to others whilst the Investigation is underway. This includes discussion with senior colleagues, as such prior discussion could prevent them from being impartial in relation to a hearing and/or subsequent appeal. Support and advice is available from the Office of Human Resources.

It is also important to impress upon all parties involved, including any witnesses, of the need to maintain confidentiality and not to discuss the matter with others.

Sometimes, it will be necessary to share information, for example if during the course of your Investigation you believe that a crime may have been committed by the parties. You should notify the Designated Manager and seek advice from OHR if this happens.

SHOULD THE INVESTIGATING OFFICER NOTIFY OHR?

The Designated Manager would normally notify the relevant OHR Advisor or Business Partner that an Investigation has been commenced. However, you may also wish to contact them independently to advise them that you will be conducting the Investigation.

CONDUCTING THE INTERVIEW

Plan the interview in advance. Make sure that there are no interruptions and that telephones are diverted – create the right environment.

Remember to be courteous, no matter how serious the allegations are.

Witnesses can sometimes give lots of information which may be a distraction from the essence of the allegation or concern. Remember to continually bring the focus of the Investigation back to the allegation being investigated.

Be careful, however, that you do not ask leading questions. Let the person you are interviewing tell you what happened in their own words.

Use Open questions to encourage interviewees to talk. Open questions generally start with 'Who', 'When', 'Why', 'Where', 'What' or 'How'. Try to avoid closed questions, those for whom the answer is 'yes' or 'no'.

Obtain statements and/or interview all individuals as soon as possible before memories fade. Statements should normally be signed. Type up your interview notes and send a copy to the interviewee for verification and signature, with a 'return by' date (after which the notes will be taken as correct or agreed).

Advise interviewees that any amendments they have can be changed if the amendment still reflects a true record of what was said. For example a minor change which clarifies meaning. If, however, any amendments are in conflict with what you have noted and doesn't reflect a true record, then you should include the amendment along with your record (clearly marked).

In the event of additional/ supplementary information being offered, the Investigating Officer should record in the Report what additional information/evidence was offered and why, as well as the rationale for accepting or declining the additional information.

The Record of Interview template at [Appendix 4b](#) can be used to record the interview and the Interview Summary template at [Appendix 4a](#) may be used to summarise and record your observations and conclusions.

Top Tips for Interviewing:

- Consider areas you wish to cover
- Be aware of the way you question (open/closed)
- Be flexible in questioning
- Remind the parties of confidentiality
- After the interview, follow up lines of enquiry (do what you say you're going to do)

When might a second interview be required?

- To corroborate stories or seek mitigation or clarification.
- To collect new evidence.
- To test and present ideas and thoughts and new evidence to a party.
- To give parties an opportunity to provide a fuller or more detailed explanation.
- To ask a wider range of questions based on new evidence that has come to light.

Top Tips for Note Taking:

- Summary not verbatim notes
- Adjust pace as required to allow effective notes to be taken
- Check notes regularly for accuracy and agreement
- Allow time on same day to type up and send notes while memory is fresh
- Double-space to allow space for amendments.

WITNESSES

Where there are other parties known to have direct knowledge of the matter that you are investigating, you will need to interview them to ascertain what they know, saw or heard. This information should be written up as a witness statement. Ask witnesses to give their account in their own words. This should be in terms of what they personally witnessed or had involvement in, not third hand views or opinions. The witness is then asked to sign the document to confirm that it is a true and accurate account.

Witnesses should be informed, at the beginning of the investigatory interview, of the reason for the meeting and that their statement may be used at a future hearing and also that it is possible that they may be called as a witness to any hearing.

This may be particularly important where facts are in dispute. It is important that witnesses only attend a hearing where it is felt that their presence and response would add genuine value, otherwise the signed witness statements should suffice.

Witness statements may contain the following:-

- The name and job title of the person giving the statement.
- Details of the date, place and time of the matter being investigated.
- Confirmation of the names and job titles of all those present.
- The reason for the witness' involvement in the matter.
- Position in which the witness was able to see the incident, if appropriate.
- Full details of what was witnessed, the sequence of events, names of other persons present, facts.
- Sketch or plan, if appropriate.
- Date, time and place the statement was taken.
- Signature of the witness to confirm the statement is a true and accurate record and date on which signed.

If there have been pre or post witness statement meetings these notes should be agreed/signed and dated.

You may also wish to use the Witness Statement template at [Appendix 4c](#).

ANONYMOUS WITNESS STATEMENTS

Where witness evidence is to form part of the case against an individual, as a general rule, that individual should be given an opportunity to clarify the evidence provided by the witness. However, in some situations, witnesses may only be willing to provide information on the condition that their identity is not revealed. Usually, this is because of a fear of reprisals.

If a witness expresses a wish to remain anonymous, seek advice from OHR.

INTERVIEWING CHILDREN OR VULNERABLE PEOPLE

Where the Investigating Officer needs to interview children or vulnerable people, OHR should be consulted.

The child or vulnerable person will need to be accompanied at the interview by a parent / guardian / carer.

Before interviewing, share your questions with the child or vulnerable person's parent / guardian / carer (although subsequent material may come to light during the interview which may need to be explored).

Send a copy of the interview notes to the parent / guardian / carer who was present at the interview.

Do not refer to the child or vulnerable person by name. Use, for example 'Child A' or a similar anonymous identifier.

RIGHTS TO LEGAL REPRESENTATION

This may be provided for in the individual's Terms and Conditions. Seek OHR advice if legal representation is requested.

Top Tips – Do's and Don'ts for Conducting an Investigation:

Do

Work as quickly as you can.
Visit 'the scene' if there is one.
Keep all parties informed to manage expectations.
Keep adequate, appropriate and consistent notes – you will be tested on your report!
Clarify and confirm as you go.
Self-reflect.
Remember to maintain confidentiality.

Don't

Get a procedure wrong.
Make assumptions about anyone / anything.
Fail to interview all relevant witnesses – ask witnesses who they think you should interview.
Avoid the hard questions.
Leave yourself unable to explain why you did what you did.
Miss out on networks for support, debriefing and CPD – keep yourself sane!
Forget that this witness could be you (so treat everyone with respect and empathy).

SOME COMMON SCENARIOS

THE RESPONDENT ADMITS COMMITTING AN OFFENCE

If the respondent admits committing a Disciplinary offence, or that they breached the Fairness at Work Policy and Guidance, there is no requirement for a lengthy Investigation as the allegation is proven by the respondent's own admission. It is important, however, to still conduct an Investigation to ascertain any contributory factors and additional key information. Ensure that the admission is recorded and signed accordingly.

If the respondent wishes to provide additional information or evidence, you must consider it in the context of the allegations as these may be relevant. E.g. evidence of mitigation, which could be relevant if the case goes to a hearing.

OTHER ALLEGATIONS COME TO LIGHT

Occasionally, during the course of an Investigation, other allegations come to light. It is important that these are immediately shared with the person who asked you to conduct the Investigation/OHR as it may be that further allegation(s) need to be considered and another Investigating Officer appointed. Where additional allegation(s) are made, it is possible for the same Investigating Officer to continue with their Investigation and have the

Terms of Reference widened by the Designated Manager to include the additional allegation(s).

SUSPENSION

If the Investigation relates to a suspended employee, speed of completion of the report is of paramount importance. You should ensure you prioritise your work such that the Investigation can be completed as quickly as possible. If you have any queries, or anticipate that there will be any delays, you should speak to OHR.

ALLEGATIONS WHERE THE POLICE ARE INVOLVED

If you are asked to investigate a matter where the police are involved, you should seek advice from OHR.

Criminal proceedings and police involvement in a case can have an important bearing on the kind of Investigation which can be properly carried out. On the one hand, employers must make their own enquiries into alleged criminal acts. On the other hand, the fact that criminal charges have been brought may limit what can be done.

In legal terms, there are rules about disclosure of information. Consequently, anything that might be said to the employer, and therefore the Investigating Officer, during an Investigation could be used in court. Therefore, when interviewing a person either during the course of the Investigation or at a subsequent hearing, a suitably worded caution must be used advising them of the position. Seek advice from OHR. Additionally, a contemporaneous note must be made of what they say. The use of such a caution does not, however, prevent the person from choosing to remain silent and they must not be pressurised into making a statement.

If your Investigation uncovers activity that is potentially criminal, which may or may not be related to the Investigation, and which is new material, you may wish to suspend the interview and the Investigation while you seek further advice.

CONDUCTING AN INVESTIGATION WHEN A PERSON IS ABSENT ON SICK LEAVE.

It is essential an Investigation into a matter is conducted fairly. It may be that a person is not well enough to attend work but is fit to attend an investigatory meeting. If the person concerned is on sick leave, you should discuss this with OHR who can, if appropriate, organise a referral to Occupational Health.

If the matter proceeds to a hearing, it is also possible for the person concerned to be represented by their union at the hearing so they do not always need to physically attend themselves. They can make a written submission for consideration.

DELAYS

Sometimes it can take some considerable time to agree suitable dates for an Investigation meeting. It is important that delays are minimised as far as possible in the interests of all the parties concerned eg early referral to Occupational Health. The reason for the delay should also be recorded.

As stated elsewhere in this Guidance, you should maintain regular contact with all parties and the Designated Manager. Notify all relevant parties in the event of any delay and make a record of this notification.

OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES

In exceptional circumstances, a person may raise a Grievance during the course of a Disciplinary procedure. Depending on the circumstances, it may be appropriate to suspend the Disciplinary procedure until the Grievance has been considered. Such a delay should only be considered where there is a strong indication that the person raising the Grievance has been mistreated. Consideration should also be given for another Designated Manager to deal with the Disciplinary case. Any records should then be passed to the new Designated Manager and if appropriate the case should be continued within the same timetable.

If a Grievance is raised whilst a matter is being investigated, you should seek advice from OHR.

SECTION 3: APPENDICES

APPENDIX 1 TERMS OF REFERENCE TEMPLATE

<p>Matter/s to be investigated (Allegation)</p> <p><i>The allegation should include a description of the alleged incident/s, place, time and date. [Attach a copy of the allegation / Fairness at Work Complaint form/letter of complaint and provide as much detail as possible; include any notes, emails, etc already submitted as part of the allegation or complaint.]</i></p>	
<p>Template Terms of Reference</p> <p>TOR to be drafted by the Designated Manager and discussed with the Investigating Officer Note: In the event that the Investigating Officer wishes to clarify aspects of the TOR or if additional issues are raised during the course of the Investigation, they should revert to the Designated Manager to review the TOR.</p> <p style="text-align: center;">TOR may include the following:</p>	
<p>Designated Manager</p> <p>Name, [Department]</p>	<p>Investigating Officer</p> <p>Name....., [Department]</p>
<p>The purpose of this Terms of Reference is to commission an Investigation into a complaint / allegation made by, Complainant, of [Department.....] against....., Respondent, of [Department.....]</p>	
<p>Delegated Authority</p> <p>You act with my authority in conducting this Investigation.</p>	
<p>Method</p> <p>Your Investigation will be conducted under the ... Policy. You should also refer to ...[insert any other relevant policy / procedure / code if appropriate]</p>	
<p>Scope of the Investigation</p> <p>The Investigation will focus on (specify the allegation/incident/complaint/concern)</p>	
<p>Exclusions</p> <p><i>Specify anything that will not be included in the Investigation if appropriate.</i></p>	
<p>Witnesses</p> <p>You should see such witnesses as necessary to ensure the effective conduct and completion of the Investigation.</p>	
<p>Timeframes for the Investigation</p> <p>It is anticipated that the Investigation will start week commencing [Date] and should be completed as soon as possible. Every effort will be taken to expedite the process, however if delays prove unavoidable relevant parties must be kept informed on a eg weekly/bi-weekly basis.</p> <p><i>An acceptable timescale for this Investigation should be discussed between the Designated Manager and the Investigating Officer. The Investigation should be completed as soon as possible and every effort should be taken to minimise delays; however, if this proves</i></p>	

unavoidable relevant parties must be regularly updated.

Responsibility of Investigating Officer

The Investigating Officer will:

- carry out the Investigation in accordance with appropriate policy/ies and Terms of Reference and
- provide a final report to the Designated Manager.

Report

The report will include all relevant evidence gathered, including witness statements, and will be referred to, Designated Manager, for further consideration and any necessary action. A summary of the findings of the Investigation will be sent to the respondent (and complainant in the case of a Fairness at Work Policy and Guidance Investigation). Only if the Investigation is followed by formal proceedings (eg disciplinary hearing) would the full Investigation report containing the original complaint appendices and witness statements be shared with the appropriate parties.

Confidentiality

This Investigation operates under a strict code of confidentiality within the requirements of the law. All information will be kept confidential and it may be appropriate to consider password protecting sensitive documents sent via email. However, all parties should be aware that the potential exists for claims made under this Policy to proceed to a disciplinary procedure and in such instances witness statements and other information would need to be disclosed to a third party. In addition, where Investigating Officers consider that a criminal offence may have been committed they are required to contact and disclose the information to the Police.

TEMPLATE LETTER FROM INVESTIGATING OFFICER TO RELEVANT PARTIES,
ADVISING THAT AN INVESTIGATION WILL COMMENCE AND ENCLOSING TERMS
OF REFERENCE (WHERE APPROPRIATE)

Date

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

INVESTIGATION

I have been appointed as the Investigating Officer to investigate the allegation(s) /
complaints(s) of

Please find enclosed the Terms of Reference for the Investigation and statement on
Confidentiality.

I will be in touch shortly to invite you to attend an Investigatory Interview.

Yours sincerely,

Name

Investigating Officer

Cc: Designated Manager

Encs

APPENDIX 1B: EXAMPLE LETTER INVITING TO AN INVESTIGATORY INTERVIEW

Date

PRIVATE AND CONFIDENTIAL

Name

Address

Dear

INVESTIGATORY INTERVIEW

I am writing to invite you to attend an investigatory interview on (date) at (place), commencing at (time).

The nature of this interview is to investigate the allegation(s) of

This interview is just to gather the facts and does not pre-judge the outcome of the Investigation.

Should you wish to do so, you have the option of being accompanied at this interview by a work colleague or trade union/staff association representative. [Not witnesses. Check relevant policy / procedure and Terms and Conditions]

Yours sincerely,

Name

Investigating Officer

APPENDIX 1C: MODEL LETTER FROM FAIRNESS AT WORK POLICY AND GUIDANCE INVESTIGATING OFFICER TO COMPLAINANT AND RESPONDENT

PRIVATE AND CONFIDENTIAL

Name
Address
Date

Dear

INVESTIGATION

I have been appointed as the Investigating Officer to investigate the allegation of

Please find enclosed a copy of the complaint and the Terms of Reference for the Investigation. A copy of the Fairness at Work Policy and Guidance is available on the internet at <http://www.gov.im/hr/fairness/>. Please let me know if you require a hard copy.

In order to establish the facts surrounding the complaint and to investigate the matter fully, I intend to interview you and relevant witnesses. I will be in touch shortly to invite you to attend an investigatory interview. You may wish to invite a work colleague or trade union representative to accompany you.

My Investigation will be completed as soon as possible. If for any reason this is not possible I will write to you to explain why. (*Alternatively explain here why it will not be possible to do so within this timescale e.g. annual leave, illness, etc.**)

If you have any concerns in this regard which you wish to discuss, please contact me in the first instance or your Human Resources Adviser or Staff Welfare (tel 687027 or email staffwelfare@gov.im).

Yours sincerely
Name (Investigating Officer)
cc Line/Designated Manager
Encs

* *Amend text of letter as appropriate*

PLANNING THE INVESTIGATION

APPENDIX 2: INVESTIGATION PLANNING CHECKLIST

This checklist should be used at the outset of the Investigation. The checklist can be used as a set of questions or discussion points with the person who asked you to conduct the Investigation.

Action	Completed
Background	
<ul style="list-style-type: none"> Obtain specific wording of the allegations /complaint / concern 	
<ul style="list-style-type: none"> Clarify the remit of the Investigation 	
<ul style="list-style-type: none"> Establish specific areas to be investigated 	
<ul style="list-style-type: none"> List all policies / procedures within which the Investigation is being carried out, with a summary of key points of policy relating to the Investigation. 	
Logistics	
<ul style="list-style-type: none"> Determine timescale for the Investigation 	
<ul style="list-style-type: none"> Obtain details of all parties 	
<ul style="list-style-type: none"> Establish availability of all parties 	
<ul style="list-style-type: none"> Find and confirm venue/s for Investigation meetings 	
<ul style="list-style-type: none"> Make sure everyone who needs them has your contact details 	
Supporting documentation	
<ul style="list-style-type: none"> Chronology of events and interventions 	
<ul style="list-style-type: none"> Copies of relevant policies/procedures 	
<ul style="list-style-type: none"> Copies of all relevant documentation (available at the time), original complaint letter, records, file notes, reports, documentary evidence and any other supporting information 	
<ul style="list-style-type: none"> If currently unavailable, details of sources of documentary evidence and protocols for gathering documentary evidence 	

THE INTERVIEW

APPENDIX 4A: INTERVIEW SUMMARY

Interviewee:	
Status (eg complainant, respondent, witness etc):	
Interviewer:	
Allegation / Matter:	
Purpose of Interview:	
Written statement obtained:	Yes / No (if 'Yes', attach statement) (if 'No', complete summary below and have the witness sign it as a true record)
Summary of Interview (if no written statement has been obtained): <i>Continue on a separate sheet if necessary</i>	
Interviewer's Observations:	
Conclusion:	

I confirm this is a true and accurate record

Witness signature: _____ Print name: _____ Date: _____

APPENDIX 4B: RECORD OF INTERVIEW TEMPLATE

Name of Interviewee:					
Accompanied by (if applicable):					
Name of Interviewer/s:					
Date:		Start Time:		End Time:	
Notes of Interview			Amendments	Evidence	
<p><i>Continue on a separate sheet if necessary. Ensure all sheets are initialled.</i></p>					

I confirm this is a true and accurate record

Signed by: _____ Signed by: _____
 Investigating Officer _____ Interviewee _____ Date _____

Page 1 of: _____

Continuation Sheet (*copy as required*)

Notes	Amendments	Evidence

I confirm this is a true and accurate record

Signed by: _____ Signed by: _____
Investigating Officer _____ Interviewee _____ Date _____

Page__of_____

APPENDIX 4C: WITNESS STATEMENT TEMPLATE

Witness Name							
Job Title							
Incident Details:							
Date				Time			
Where did the alleged incident happen?							
Who was involved:							
Name				Job Title			
Name				Job Title			
Name				Job Title			
Name				Job Title			
Continue on a separate sheet if necessary							
What was the witness' involvement in the incident?							
From where did they witness the event?							
<i>Provide a sketch or plan if appropriate.</i>							
Full details of what was witnessed:							
<i>Include sequence of events and names of others present.</i>							
<i>Continue on a separate sheet if necessary</i>							

I confirm that this is a true and accurate record

Name _____ Signature _____

Date _____ Time _____ Place _____

Continuation Sheet

Full details of what was witnessed:

Include sequence of events and names of others present.

Continue on a separate sheet if necessary

I confirm that this is a true and accurate record

Name _____ Signature _____

Date _____ Time _____ Place _____

THE REPORT

APPENDIX 5A: INVESTIGATION REPORT TEMPLATE

CONFIDENTIAL

INVESTIGATION REPORT

NAME
SERVICE / DEPARTMENT

INVESTIGATING OFFICER - NAME

CONTENTS

- 1) Introduction
- 2) Terms of Reference
- 3) Details of the Evidence (including details regarding any supplementary evidence offered and rationale for accepting/declining this)
- 4) Summary of the Investigation
- 5) Detailed Report for each Allegation or Complaint
- 6) Conclusion / Findings
- 7) Other Factors to be Considered
- 8) Appendices

1 INTRODUCTION

- 1.1 Provide brief details of the 'subject' of the Investigation, their employment history, current role and how long held etc.
- 1.2 Provide brief outline of how the concerns arose.
- 1.3 Outline who commissioned the Investigation
- 1.4 Note if suspended and when, whether redeployed for duration of Investigation or if there are any specific changes in place to allow the Investigation to take place ie. line management responsibility removed, budget responsibility suspended, taken off usual duties but still within department etc.
- 1.5 If there are specific allegations record them at this point.
- 1.6 If there are recommendations for the organisation outline that they will be covered by an action plan at the end and not detailed in the main body of the Report.

2 TERMS OF REFERENCE

These are the Terms of Reference given to the Investigating Officer which outline what is being covered by the Investigation and will include what the alleged breach is.

2.1 Investigation objectives:

To establish whether:

-
-

3 DETAILS OF EVIDENCE

3.1 Interviews were held as follows:

Name	Date/time of 1 st Interview	Date/time of 2 nd Interview (where relevant)

All interviewees should be noted (including telephone interviews) - the initials should be inserted after each name as these will be the initials used throughout the report

If the list of interviewees is long consider including it as an appendix.

If the Investigating Officer has not interviewed all individuals suggested by the 'subject' of the Investigation the decision should be recorded in this section or reference made to the log and attached as an appendix (including reasons e.g. character reference only)

List of files and documents inspected:

-
-

If the list is long consider including it as an appendix

3.2 The following additional evidence was examined (for example):

- Letter of complaint
- Personal file
- Policies/procedures eg., Fairness At Work Policy and Guidance
- Specialist advice eg., IT

4 SUMMARY OF THE INVESTIGATION

- Avoid pages and pages of continuous text - break up with headings e.g. 'Working Relationships', 'Service Complaints', 'Performance Management', 'Shouting Incident - 31 May', 'Previous Management Action', etc... This makes the report easier to read.
- Avoid using vast extracts from statements - only quote directly from the statements where it is necessary, for example, to illustrate the use of language or if the response to a question shows a particular disregard for policy or respect for others. It is the Investigating Officer's responsibility to analyse all the statements and draw out all corroborative evidence. Interviewees are not always articulate during interviews and the Investigating Officer may therefore use their own words to concisely convey the findings.
- Investigating Officers are not just fact finders - their duty extends beyond just recording a verbatim account and they have a responsibility to contextualise and explain what the evidence means. Avoid 'he said, she said' reports - the reader should not be left trying to establish what all the facts mean.
- If the evidence is inconclusive or there is no evidence to substantiate an allegation - say so. Is there any evidence to support the allegations - it is the Investigating Officer's responsibility to explain how significant the evidence is - this should come across throughout the report.
- It is important to note any mitigating factors e.g. lack of procedural guidance, management action or expected documentation and any other actions / behaviours which may have potentially compounded or aggravated the situation.
- Using full names throughout the report can be very repetitive use initials e.g. Joe Bloggs (JB) - it is suggested that you quote full name and job title the first time they are mentioned within the report - initials thereafter are sufficient.

- In addition to the specific allegations the report should include any patterns of behaviour that may have some relevance.
- If specific actions demonstrate a breach of policy or service procedures - these should be noted throughout the report, where appropriate.

5 DETAILED REPORT FOR EACH ALLEGATION OR COMPLAINT

Organise the findings under each main allegation.

<p><i>Allegation 1.</i></p> <p>Outline the allegation as per the complaint letter or Terms of Reference, be specific</p>	<p><i>For example: There is insufficient evidence to warrant further action or there is sufficient evidence to support further action.</i></p>
<p><i>Allegation 2</i></p>	
<p><i>Allegation 3 etc</i></p>	

6 CONCLUSION/FINDINGS

This is where the Investigating Officer provides an overall fact based opinion on a) whether there is sufficient or insufficient evidence to support the allegation/s and b) the strength of the evidence.

Draw out key facts which demonstrate particular breaches of policy e.g. Civil Service Regulations (where applicable), Fairness at Work Policy and Guidance, Financial Regulations, etc.

If the Investigating Officer believes that there is sufficient evidence to warrant consideration of further action it should be recorded here:

7 OTHER FACTORS TO BE CONSIDERED

- Cover issues which you have identified but are not directly related to the allegations or objectives of the Investigation (could be system issues, management or policy weaknesses or matters which relate to the individual but were not part of the original brief – e.g. patterns of behaviour)
- If there are any mitigating factors ensure that they are clear and explain their significance.
- Provide these to the Designated Manager in a separate report.

*Any recommendations relating to system, policy, procedural or management weaknesses should be reported separately. **These Action Plans should not make any reference to the individuals involved in the Investigation.***

8 APPENDICES

Ensure that all appendices are attached and made reference to throughout the report.

THE HEARING

APPENDIX 6: MODEL PROCEDURE FOR THE CONDUCT OF HEARINGS AND APPEALS

INTRODUCTION

Introduction of the parties and outline of format for hearing.

In an appeal hearing, the order of presentation is reversed, with the appellant presenting their case first.

PROCEDURE

1. INVESTIGATING OFFICER'S CASE

An opening statement may be made and as part of the presentation of the case witnesses may be called.

The respondent and/or his/her work colleague or staff association/trade union representative will have the opportunity to ask questions of the Investigating Officer and each witness after he/she has given his/her evidence.

The Hearing Officer/Panel may also ask questions.

2. THE CASE FOR THE RESPONDENT

The person accompanying the respondent has a statutory right to address the hearing but no statutory right to answer questions on the respondent's behalf. They should be allowed to address the hearing in order to:-

- present the respondent's case;
- sum up the respondent's case;
- respond on the respondent's behalf to any view expressed at the hearing; and
- confer with the respondent during the hearing.

The person accompanying the respondent may not address the hearing if the respondent does not wish it and must not prevent other parties from presenting their cases.

An opening statement may be made and as part of the presentation of the case witnesses may be called.

The Investigating Officer may ask questions of the respondent or his/her work colleague or staff association/trade union representative and of each witness after he/she has given evidence.

The Hearing Officer/Panel may also ask questions.

3. RE-EXAMINATION

Both the Investigating Officer and the respondent and his/her work colleague or staff association/trade union representative will be asked if they wish to re-examine any evidence before proceeding to the next stage.

4. FINAL STATEMENTS

Both the Investigating Officer and the respondent and/or his/her work colleague or staff association/trade union representative may make final statements. The respondent's closing statements are presented last.

5. WITNESSES

A witness shall only be present while giving evidence or being questioned thereon.

6. ADJOURNMENT

The Investigating Officer, the respondent or their work colleague or staff association/trade union representative may request an adjournment of the hearing at any stage.

7. CONSIDERATION OF THE CASE

The Investigating Officer, the respondent and his/her work colleague or staff association/trade union representative and any witnesses still present will then withdraw whilst the Hearing Officer/Panel consider the case. The person or body conducting the hearing will then deliberate, with the OHR Business Partner and/or OHR Adviser advising on legal and procedural matters.

If it is necessary to recall either party or any witnesses in order to resolve points of uncertainty on the evidence given, both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

8. DECISION

The decision will, if possible, be given orally immediately after the hearing but in any case such decision will be confirmed in writing, within the timescales laid out in the relevant procedure, with a copy to the respondent's work colleague or staff association/trade union representative.

SECTION 4: CRIB SHEETS

WHAT MAKES A GOOD INVESTIGATING OFFICER?

Effective workplace Investigating Officers use a variety of skills, strategies and techniques during the course of their Investigation.

These include:

- The ability to prepare meticulously.
- The ability to be analytical and thorough when collecting, sorting and preparing evidence.
- The ability to process and assess often-complex information involving a variety of attitudes, behaviours and contexts.
- Accurate note taking.
- The ability to write a report that is clear, logical and accurate.
- Active listening and appropriate questioning techniques.
- Impartiality and objectivity.
- The ability to deal with the unexpected and manage strong emotions and other challenging situations.
- The ability to be able to create and control a safe environment to establish the necessary rapport.
- The ability to manage conversations in a safe and structured way.
- Overcoming blocks and barriers to an Investigation.
- Ensuring that privacy is respected where possible.
- Not making false promises or setting unrealistic expectations.

INTERVIEW TECHNIQUES

Free Recall

This technique is useful to help build trust and reveal the true facts.

Ask open questions to obtain the truth, information and evidence. Probe using Why? When? What? Who? Where? How?

- Ensure the person you are interviewing is clear about the process, knows you will be taking notes, that these will be typed up and sent to them for checking, prior to asking them to sign that they are a true and accurate record.
- Explain what is required.
- Ask the person to speak slowly.
- Use a relaxed approach.
- Enable the person to recall freely from memory.
- Allow the person to do the talking.
- Listen carefully.
- Make notes of dates, times and facts using the person's words as much as possible.
- Encourage the person to be clear about dates and times.

- If the person becomes upset, allow the opportunity for a break. If necessary, postpone the interview and reconvene at a later date.

Conversation management

This is useful to elicit more detailed information.

- Prepare general questions and specific detailed questions in advance eg:
 - What did you see?
 - Are there any records that confirm the allegation or concern?
 - Where were you standing /sitting? Draw a diagram if necessary?
 - Why did you react in that way? etc
- Ask open questions to establish detail.
- Then ask specific questions in relation to what has already been said.
- Review information collected.
- Reiterate what you have been told in order to clarify or confirm /check you have understood correctly.
- Check your comprehension by reading back the notes taken.

Active Listening

- Listen carefully to pick up inconsistencies and assimilate information from what is being said and how it is being said.
- Use silence to give the person time to think.
- Observe body language, to check that it is in congruence with what is being said and use your own body language to encourage the person who you are interviewing.

Top Tips for Active Listening:

- Consider non-verbal communication (both for yourself and the person you are interviewing)
- Ask questions, don't assume
- Check, clarify and probe
- Reflect and summarise regularly
- Empathy not sympathy

QUESTION STYLES

Open – cannot be answered by a yes or no

Questions encourage interviewees to talk.

“Who was involved?”

“What did you see?”

Probing - Investigating further/obtaining further details:

“When you took that course of action, what was the outcome?”

“What exactly was said to you?”

“Tell me a little more about.....”

“What happened when.....?”

Closed questions i.e. with yes or no answers should only be used to elicit some commitment for example, “did you know what was involved?”

“Are you quite sure that is what was said?”

Be careful about using closed questions – the 6 most useful words in the dictionary for the interviewer are: who, what, where, when, why and how?

ACTIVE LISTENING SKILLS FOR THE INVESTIGATING OFFICER

<i>Non Verbal Communication</i>	<ul style="list-style-type: none"> • Gestures • Eye contact • Nods
<i>Encouraging</i>	<ul style="list-style-type: none"> • Please tell me more ... • You were saying earlier ... • Could you explain how you felt ...
<i>Acknowledging</i>	<ul style="list-style-type: none"> • I understand ... • I see ... • That sounds important to you ...
<i>Checking</i>	<ul style="list-style-type: none"> • You seem to be angry ... • Am I right in thinking that you said ...
<i>Clarification</i>	<ul style="list-style-type: none"> • I am not sure that I understand ... • Did you mean ...
<i>Affirmation</i>	<ul style="list-style-type: none"> • Thank you very much for meeting with me ... • I know that it is not easy but you are doing well ...
<i>Empathy</i>	<ul style="list-style-type: none"> • I can understand why you are worried ... • I realise that you are getting impatient/upset/angry ...
<i>Asking a variety of questions</i>	<ul style="list-style-type: none"> • What, why, when, who, where, how • Use of open questions to elicit a full response
<i>Reflecting</i>	<ul style="list-style-type: none"> • So you say that you want him/her sacked, why is that? • You are clearly upset about his/her behaviour, what is it that particularly upsets you ...?
<i>Summarising</i>	<ul style="list-style-type: none"> • So you are saying ... • If I could just summarise quickly what I think you have said
<i>Timing</i>	<ul style="list-style-type: none"> • Questions and answers should be at an appropriate pace which makes the parties feel at ease.
<i>Funnelling</i>	<ul style="list-style-type: none"> • Using open questions to begin, then gradually move to more closed questions in order that you encourage the speaker to move from a narrative to a more focused description of their concerns
<i>Tone of voice</i>	<ul style="list-style-type: none"> • Be considerate to how your tone of voice may be interpreted – it's not what you say, it is the way you say it!

INVESTIGATION SKILLS BEST PRACTICE CHECK SHEETS

Opening the interview	
Thank person for attending the interview	
Note if they are accompanied and ensure that they are comfortable to proceed if they are not accompanied	
Check that the room is comfortable and enquire if they want a drink of water. Explain that breaks will be available if required	
Explain that this is a fact finding exercise	
Explain who you are (your substantive role and Investigating Officer role)	
Introduce the note taker and explain their role, if applicable	
Explain which policy you are working to and which sections – provide a copy	
Outline the Terms of Reference of the Investigation and explain who your point of contact is	
Outline the purpose for the interview – to hear their recollection of events and to gather as wide a range of information and facts as possible to help the organisation to reach an appropriate outcome	
Check that the person understands the reason for the interview	
Explain that any responses that they give to your questions will be noted, typed up and sent to them for signing.	
Closing the interview	
Thank person for being helpful and for answering questions	
Ask them if there is anything else that they wish to add	
Read back the notes (if it has been a short interview) or advise them that they will receive typed notes in due course	
Summarise the key points	
Explain that the notes will typed up for them to be checked and signed	
Explain the timescales that you are working to	
Explain that you may need to come back to them if there are further questions that you have	
Explain how they can contact you if they have recollections of issues that they wish to discuss with you after the interview (careful not to encourage too much contact from the party)	
Explain that you will be producing an Investigation report for (name/role of person) and explain that you will not be reaching a determination yourself	
Explain that the person may be required to attend a hearing – they will be contacted in due course	
Remind the person of need for confidentiality at all times	
Ask them if they have any final questions for you	
Thank the person again, close the meeting and note the time	

POSSIBLE SOURCES OF EVIDENCE CHECK-LIST

Source of Evidence	Included	Source of Evidence	Included
Accident Books		Meeting agendas	
Annual Leave / Flexi Records / Sick Leave		Meeting minutes	
Application forms		Occupational Health reports	
Appraisals		Phone bills	
Attendance records		Photos	
CCTV footage		Postage records	
Costs of damages		Posters/notice board items	
Credit card statements		Presentations	
Diaries		Receipts (petrol, etc)	
Emails		Reports	
File notes		Rosters	
Fire alarm records		Site plans	
Health and safety records		Supervision notes	
Incident Logs		Time Sheets	
Insurance certificates		Train/bus tickets	
Internal audit		Training records	
IT records		Travel details	
Letters or memos		Voicemail messages	
Log books/ signing in sheets		Web site registration details	
Other (specify):			

SECTION 5 – FLOWCHART TO ILLUSTRATE PROCEDURE

