

Drafting a Terms of Reference (ToR)

What is a Terms of Reference?

A Terms of Reference for an investigation is a set of instructions that lay out the scope of the investigation, and the contents and function of the final report. The terms of reference act as a clear guide to the investigator, complainant and respondent(s).

The document assists in managing expectations of those involved in the investigation and the relationship between manager and investigator during the course of the investigation.

Who drafts it?

The ToR should be drafted by the organisation and signed off by the senior manager with the delegation to commission an investigation.

When do I need one?

It's best practice to draft a ToR before conducting any investigation. The larger and more sensitive the investigation, the greater need for a clear ToR. They're particularly important when instructing an external investigator to conduct an investigation as they authorise the external party to ask the questions necessary to conduct the inquiry.

What should it contain?

Terms of reference should include the following details:

- The nature of the allegations known at the time
- Type of investigation being undertaken
- Specify the authority under which the investigation is being conducted
- The scope of the work to be undertaken
- The output from the investigation - investigation plan, report, findings, recommendations

Can it be changed?

You should make a provision in the terms of reference for the aim and objectives of the investigation to be changed and specify the process that would allow this to occur (generally in writing in consultation with the investigator and delegate).

Changes may be necessary when new information comes to light that requires broadening the investigation or changing circumstances mean that the purpose of the investigation changes.

Example Terms of Reference

The terms of reference of your investigation are as follows:

Investigate whether Mr A has, during the course of his employment as Director Special Operations Branch since 2 July 2004, engaged in inappropriate conduct and behaviour towards current and/or former members of staff within the Branch, specifically whether Mr A has:

- engaged in bullying, harassment and/or intimidation towards members of staff within the branch;
- exhibited aggressive, bullying, and/or intimidating behaviour towards members of staff that has resulted in the members of staff, particularly female members of staff, crying, feeling distressed and fearful and/or trepidation;

Investigate whether there are grounds to conclude that Mr A has breached the principles under the organisation's Code of Ethical Conduct and Respectful Workplace Policy.

Advise as to whether Mr A's alleged conduct amounts to misconduct and advise whether the matter should be treated as a disciplinary matter.

As part of your terms of reference it is requested that you provide an investigation report that includes the following:

- a. consolidate all the material gathered during the investigation process;
- b. Detail the allegations involving the officer;
- c. Outline the investigation process followed;
- d. In relation to the allegations, set out your view on the relevant facts as to whether on the balance of probabilities the person has engaged in the alleged conduct, referring to material upon which the view is based;
- e. If appropriate express a view on whether the matter should proceed to be treated as a disciplinary matter, including any comment on systemic or operational matters that need to be addressed;
- f. Include all relevant attachments, such as correspondence with the officer, disciplinary and other interviews, witness statements,
- g. Be signed and dated.