

PROCEDURE FOR DEALING WITH ALLEGATIONS OF RESEARCH MALPRACTICE OR MISCONDUCT

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1. INTRODUCTION

Research at The Open University is based on the principles of high standards, honesty, openness, accountability, integrity, inclusion and safety. The document that sets out the standards that govern OU research is the [Code of Practice for Research](#). It ensures that research carried out in the Open University conforms to legislative, regulatory, governance and ethical standards.

The University believes that staff and students should feel able to raise legitimate concerns without fear of their position within the University being jeopardised.

This document sets out the procedure for dealing with allegations that the standards set out in the Code of Practice for Research have not been maintained by staff members or other researchers associated with the University.

Allegations against postgraduate research students of plagiarism or other research misconduct, as defined in section 2 below, will be dealt with according to the Postgraduate Research Student Plagiarism and Research Misconduct Policy (<https://help.open.ac.uk/documents/policies>).

Research misconduct is characterised as behaviours or action that fall short of the standards of research required to ensure that the integrity of research at the OU is upheld.

2. DEFINITIONS

Research misconduct or malpractice means any breach of the University's Code of Practice for Research, including, but not limited to:

- Fabrication or falsification, including the creation of false data, imagery of other aspects of research, including documentation and/or participant consent, and the inappropriate manipulation /selection of data, imagery, documentation and/or consents.
- Dishonesty in proposing, carrying out or reporting results of research, including suppression of relevant findings or data, including knowingly, recklessly or by gross negligence, presenting a flawed interpretation of data, and misrepresentation of data and/or interest and/or involvement.
- Plagiarism, including the general misappropriation or use of others' ideas, data, intellectual property or work (written or otherwise) without acknowledgement or permission. For a definition of and examples of plagiarism within the context of a research degree, refer to the Postgraduate Research Student Plagiarism and Research Misconduct Policy (<https://help.open.ac.uk/documents/policies>).
- Deliberate, dangerous or negligent deviation from accepted practice in carrying out research.
- Failure to follow agreed protocols or accepted procedures, or to exercise due care, including:
 - Failure to exercise due care in carrying out responsibilities for avoiding unreasonable risk or harm to humans, animals used in research or the environment.
 - Failure to properly handle privileged or private information on individuals collected during research.
- Facilitation of misconduct in research by collusion in or concealment of such actions by others.

- Failure to comply with University policies regarding ethics review.

Intentional non-compliance with: the terms and conditions governing the award of external funding for research; the University's policies and procedures relating to research, including accounting requirements, ethics, and health and safety regulations; or any other legal or ethical requirements for the conduct of research.

Improper dealing with allegations of misconduct, including failure to address possible infringements, including attempts to cover up misconduct or reprisals against whistle-blowers, and failing to deal appropriately with malicious allegations.

Research malpractice or misconduct includes acts of omission as well as acts of commission. It does not include honest differences of opinion in interpretation or judgement in evaluating research methods or results, or misconduct unrelated to research.

The Complainant means the person who makes the allegation of misconduct.

The Respondent means the person (s) against whom an allegation of research misconduct is made, or the person(s) whose actions are the subject of an inquiry or investigation.

3. RESPONSIBILITY

The Pro-Vice-Chancellor, Research, Enterprise and Scholarship (PVC-RES) is the Named Person responsible for the investigation of allegations of misconduct or malpractice. There are three stages in the process, with responsibility for Stage 1 being automatically delegated to the relevant Head of Unit. The PVC-RES may delegate management of the process to a member of the Research, Enterprise and Scholarship Unit. If there is a conflict of interest in an individual case, the PVC-RES will delegate their responsibility to the Deputy Chair of Research Committee.

4. REPORTING CONCERNS

The University believes that staff and students should feel able to raise legitimate concerns without fear of their position within the University being jeopardised. If a member of staff or a student has concerns about the conduct of research under any circumstances, normally they should in the first instance report their concerns, in writing, to the Head of Unit. They may choose to do this with the guidance and support of their Head of School, their academic supervisor (if a research student) or other appropriate person.

The University Public Interest Disclosure (Whistleblowing) policy (<http://www.open.ac.uk/foi/main/sites/www.open.ac.uk.foi.main/files/files/Whistleblowing%20Policy.pdf>) also provides guidance to staff and students wishing to raise reasonable suspicions that they may have about irregularities in relation to research practice.

The PVC-RES may, at his/her discretion, choose to investigate an anonymous allegation, or a serious allegation where there is no specific Complainant.

People outside the University, and the general public, may also raise legitimate concerns with the PVC-RES.

5. FAIRNESS

The University will investigate allegations fairly and without reference to individual characteristics, in accordance with its commitment to create an inclusive university community which treats all staff with dignity and respect.

6. FRAUD

If at any stage, those undertaking the investigation of the allegation find that there is suspicion of fraud, the matter must immediately be referred to the University Secretary's Office and the Chief Auditor. (The fraud response policy provides a definition of fraud <https://help.open.ac.uk/documents/policies/anti-fraud>).

7. INFORMAL RESOLUTION

Where an issue appears to be basic or minor, or where there appears to be a potential misunderstanding or dispute between individuals, Faculties are encouraged, in the first instance, to attempt to address the matter informally e.g. via informal discussion, agreed mediation or by a facilitated meeting. It is recommended that a time-limit for resolution by informal means is set at the beginning of this process. In the event that the individuals concerned are not satisfied with the outcome of an informal approach, the matter should be addressed via the Stage 1 Preliminary investigation.

Faculties must keep a record of any informal concerns raised, and the outcomes, and inform the Senior Manager, Research Governance, Research, Enterprise and Scholarship Unit.

Where the alleged misconduct appears to be serious, or where attempts at informal resolution have not been successful, the Head of Unit will inform the PVC-RES of the allegation, in order for the Stage 1 Preliminary Investigation to be instigated.

8. THE INVESTIGATION PROCEDURE

The Formal Procedure for investigating allegations of research malpractice or misconduct consists of three stages:

- Stage 1: Preliminary investigation
- Stage 2: Formal investigation
- Stage 3: Appeal process

9. STAGE 1: PRELIMINARY INVESTIGATION.

This stage should normally be completed within 20 working days from the date the complaint is received, and is completed by the home Faculty.

- a) On receipt of information concerning suspected research malpractice or misconduct, either from the Head of the Unit concerned, or from elsewhere, the PVC-RES will determine whether there is sufficient weight to the allegation to merit further investigation. Where this is the case, they will request the Head of Unit to carry out a Stage 1 preliminary investigation, to establish the circumstances and nature of the allegation. Administrative support to the investigation will be provided by the Research, Enterprise and Scholarship Unit. The Head of Unit may delegate the conduct of the investigation within their unit if appropriate. The PVC-RES will inform Faculty's Head of Strategic Human Resources that they have instigated an investigation into possible research malpractice or misconduct, and where appropriate, will seek the advice of Human Resources in handling the case.

- b) Where the allegation is about someone funded by, or engaged with, RCUK, even if it is about work not connected with a grant from a UK Research Council, the case must be reported to the relevant Research Council at Stage 1.
- c) The person conducting the investigation (The Head of Unit or their delegate) will declare to the PVC-RES in writing that their appointment involves no conflict of interest, seeking advice from the PVC-RES if unsure. If the Head of Unit is the Complainant or the Respondent, is personally associated with the work to which the allegation relates or has any other conflict of interest, the PVC-RES should instead refer the allegation to another senior member of academic or research staff, including but not limited to the Head of a different Unit.
- d) The PVC-RES and the Head of Unit must ensure that all relevant information and evidence are secured, so that it is available to any investigation conducted under the Procedure. This may in some circumstances include, but is not limited to:
 - Securing all relevant records, materials and locations.
 - In liaison with HR and the relevant line manager, considering whether the Respondent should be temporarily suspended from duties on full pay, temporarily barred from part or all of the premises, have some duties temporarily restricted or restricted from contacting OU staff, or those from a partner organisation.

Such actions should only be taken where there is a clear risk to individuals, or that evidence might be destroyed, and only after careful consideration of the risks and consequences. The reasons for taking such actions must be recorded in writing and communicated to those involved. The PVC-RES should reassure the Respondent that these measures are not part of any disciplinary action, and do not indicate that the allegations are believed to be true. Any suspension or barring of the Respondent should be reviewed throughout the Procedure to ensure that it is still appropriate

- e) The Head of Unit (or delegate) should inform the Respondent in writing that: an allegation of misconduct in research has been made which involves him/her; it will be investigated under this Procedure; and that the Respondent will be given the opportunity to respond to the allegation and set out his/her case. A written summary of the allegation should be provided to the respondent together with a copy of this Procedure.
- f) The Head of Unit (or delegate) will interview both the Complainant and the Respondent as part of the preliminary investigation. Both the Complainant and the Respondent may bring a suitable accompanying person to any meeting (a fellow employee or Trade Union representative).
- g) The role of any individual accompanying the Complainant or Respondent is to support the person. They may make statements on their behalf and confer with them, but the person must answer any questions put directly to them, themselves.
- h) Where a staff member believes that disability or language skills may impact on their ability to participate as appropriate in the Procedure, they should raise this with the Research, Enterprise and Scholarship Unit as soon as possible, enabling the implementation of appropriate reasonable support or adjustments to be made for the conduct of the investigation.

- i) The Head of Unit (or delegate) may interview other individuals, if this is required in order to obtain a full picture of the circumstances of the complaint.
- j) The outcome of the preliminary investigation will be either:
 - i) that the allegation is unfounded, because it is mistaken, frivolous, vexatious or malicious, or otherwise without substance,
 - ii) that there is some substance in the allegation, but because of a lack of intent to deceive, or due to its relatively minor nature, the matter does not warrant a formal investigation. In this case the Head of Unit will decide what action, if any, is required to put the matter right as far as possible, e.g. through education and training, or another non-disciplinary approach, such as mediation,
 - iii) that the case warrants referral directly to the University's disciplinary procedures; another relevant University mechanism, or to an external organisation, including but not limited to, statutory regulators, funding bodies or professional bodies,or
 - iv) that there is sufficient substance to the allegation to warrant a formal investigation.
- k) On completion of his/her enquiries, the Head of Unit (or delegate) will prepare a confidential written report which will include:
 - the details of the allegations,
 - details of the enquiry,
 - the conclusions,
 - reasons for the decisions,
 - recommendations for actions to put the matter right, as far as possible,
 - any recommendations (e.g. training, improved practice) to prevent future similar occurrences.

The report will be sent to the Respondent and the Complainant, who will have the opportunity to comment on matters of fact only in the report.

- l) The report, together with any comments on matters of fact from the Complainant or Respondent, will then be forwarded to the PVC-RES, who with the Head of Unit, will take the final decision on any amendments to the report in the light of such comments.
- m) Following the completion of the Stage 1 Preliminary Investigation, the PVC-RES will provide details of the case, and of the outcome to:
 - the Chief Auditor
 - the Faculty's Strategic Head of Human Resources
 - if appropriate, the relevant Research Council.

If either the Complainant or the Respondent is not satisfied with a preliminary investigation which results in outcome a) or b) as described above, they may request, in writing to the PVC-RES, that a formal investigation be instigated, setting out the nature of, and grounds for, the allegation.

10. STAGE 2: FORMAL INVESTIGATION

This stage should normally be completed within 40 working days from the date that the Stage 1 report is received by the PVC-RES.

- a) If the outcome of the preliminary investigation is that there is sufficient substance to the allegation to warrant a formal enquiry, or if either the complainant or the respondent requests a formal enquiry, the PVC-RES (or his delegate, if there is a conflict of interest - see paragraph 3 above) will instigate this.
- b) The PVC-RES will:
 - Consider whether action as described in paragraph 9d) above, if not already taken, should at this point be taken to secure evidence and information relevant to the investigation.
 - Update the Faculty's Strategic Head of Human Resources
 - Set up an Investigation Panel to investigate the allegations.
 - Inform the respondent and complainant that a Formal Investigation of the allegation is to take place.
- c) Inform the respondent and complainant of the arrangements for the Investigation Panel.

Arrangements for the Investigation Panel

- d) The Panel will consist of at least three members. These individuals must be independent, impartial and competent to make judgement. At least two members of the Panel should be senior academics. One member of the Panel should be external to the University. At least one of the academic specialists should be specialists in the academic area where the malpractice or misconduct is alleged to have taken place, and this can include an external panel member. Where an allegation involves research being conducted in conjunction with a partner organisation, then appointing a representative of that organisation to the Panel may be considered. One of the internal members of the Panel will be appointed as Chair by the PVC-RES. Administrative support to the Panel will be provided by the RES Unit.
- e) Each Panel member will declare in writing to the PVC-RES that their appointment involves no conflict of interest, seeking advice from the PVC-RES if unsure.
- f) The task of the Investigation Panel is to consider all the relevant evidence and to conclude whether the allegation of misconduct or malpractice in research is upheld in full, upheld in part, or not upheld. It may also make recommendations regarding any further action necessary to rectify misconduct that it has found. It may recommend to the appropriate University authority that the record of research be corrected, in order to preserve the reputation of the University.
- g) The Panel will interview the Complainant and the Respondent. It will also interview other individuals as required, as well as examine any other evidence of information relevant to the enquiry. The panel may seek confidential advice from persons with relevant expertise, both within the University and outside it.

Those seeking advice should, so far as is possible, make no information available which could lead to the identification of any individuals involved in the case

- h) The Complainant or Respondent may bring a suitable accompanying person to the interview, fellow employee or Trade Union representative). The role of any individual accompanying the complainant or respondent is to support the person. They may make statements on their behalf and confer with them, but the person must answer any questions put directly to them, themselves.
- i) At the conclusion of its investigation, the Stage 2 Panel will submit a brief report to the PVC-RES.

Outcome of Formal Investigation

- j) The Investigation Panel will either:
 - i) find that there is no substance to the allegation – in which case it will recommend to the PVC-RES that the matter be dismissed

or

 - ii) find that there is substance to the allegation.

The standard proof used by the Investigation Panel is that of 'on the balance of probabilities'.

- k) The Panel may determine that an allegation is not upheld because it is mistaken or is frivolous or is otherwise without substance or is vexatious and/or malicious. The Panel may also determine that an allegation is not upheld because of a lack of intent to deceive or due to its relatively minor nature and should therefore be addressed through education and training or another non-disciplinary approach, such as mediation.
- l) Where there is found to be substance to the allegation, the Panel may also make recommendations regarding any further action necessary by the University and/or other bodies to rectify any misconduct it has found, to correct the record of research and to preserve the academic reputation of the University, for consideration by the appropriate University authorities. Such recommendations might include but are not limited to:
 - i) whether the allegation should be referred to the University's relevant disciplinary procedure; and/or
 - ii) whether the allegation should be referred to another relevant University mechanism; and/or
 - iii) what external organisations should be informed of the findings of the investigation, with appropriate confidentiality, including but not limited to statutory regulators, relevant funding bodies, partner organisations and professional bodies, and/or
 - iv) whether any action will be required to correct the record of research, including but not limited to informing the editors of any journals that have published articles concerning research linked to an upheld allegation of misconduct in research and/or by a person against whom an allegation of misconduct in research has been upheld; and/or
 - v) whether procedural or organisational matters should be addressed by the University or other relevant bodies through a review of the management of research; and/or
 - vi) informing research participants or patients or their doctors; and/or

- vii) other matters that should be investigated, including allegations of misconduct in research which are either unrelated to the allegation in question or alleged to have been committed by persons other than the Respondent and/or other forms of alleged misconduct.
- m) The PVC-RES will inform the Complainant, Respondent and the Head of Unit concerned, of the outcome of the formal investigation.
- n) The PVC-RES will then consult with the Head of Unit and with HR to decide on what action should be taken.
- o) The Complainant and the Respondent both have the right to appeal against the decision of the Investigation Panel.
- p) If neither party appeals, then the case will be concluded by putting in place the actions listed in paragraph 12 below.

11. STAGE 3: APPEAL PROCESS

This stage should normally be completed within 40 working days from receipt of notification of an appeal.

- a) If either the Complainant or the Respondent wishes to appeal against the outcome of the Formal Investigation, they should notify the PVC-RES in writing within 15 working days, and include details of the grounds on which the appeal is made.
- b) The PVC-RES (or the Deputy Chair of the Research Committee, if there is a conflict of interest) will establish an Appeal Panel to consider the case. The Panel will consist of three senior individuals who have had no previous involvement with the case, with administrative support provided by the office of the PVC-RES. One member of the Panel should be external to the University.. The PVC-RES will appoint one of the internal members of the Panel as Chair. The Panel will review the evidence that informed the outcome of the formal investigation, including carrying out interviews if the case requires it.
- c) The Appeal Panel will provide a short report of their findings to the PVC-RES.
The Appeal Panel will either:
 - i) confirm the findings of the Investigation Panel,
 - or
 - ii) decline to confirm the findings of the Investigation Panel.
- d) The PVC-RES will decide whether the allegations are upheld, based on the conclusions of the formal investigation and appeal process. His/her decision is final.
- e) The PVC-RES will inform the complainant and the respondent of the findings of the Appeal Panel.

If the allegation is upheld, the PVC-RES will then consult with the Head of Unit and with HR to decide what action should be taken as a result of the Appeal Panel findings. This may include disciplinary procedures. In making this decision, the PVC-RES will take into account any recommendations made by the Panel regarding any issues that it considers the University and/ or other organisations should address as under Outcome of Formal Investigation, above.

12. SUBSEQUENT ACTIONS

Once the procedure for dealing with the allegation has come to an end (whether at Stage 2 or Stage 3), the following steps must be taken:

- The PVC-RES will take any administrative actions that may be necessary to: meet all legal and ethical requirements; protect the funds and/or other interests of grant- or contract-awarding bodies; and meet all contractual commitments, including any relating to disclosure of the outcome of the Formal Investigation.
- The PVC-RES will ensure that information on formal investigations of allegations is provided to funders of research, and/or statutory bodies as required by their conditions of grant, and other legal professional and statutory obligations.
- The PVC-RES will where appropriate, notify in writing any relevant regulatory or professional bodies, any relevant partner organisations and such other persons or bodies as he/she deems appropriate, including but not limited to the editors of any journals which have published articles concerning research linked to an upheld allegation of misconduct in research and/or by a person against whom an allegation has been upheld.
- The PVC-RES will keep a record of the main facts of the case. If the allegation is dismissed, then no other record will be kept, except that Human Resources will place a statement of the dismissal of the allegation on the respondent's personal file.
- The PVC-RES will provide a brief report to the Audit Committee, outlining the actions taken and the outcome of any Stage 2 or Stage 3 investigation that has taken place.

13. VEXATIOUS, MALICIOUS OR FRIVOLOUS ALLEGATIONS

Where an investigation determines that the allegation is vexatious, malicious or frivolous, the PVC-RES may recommend referral of the complainant to the disciplinary procedure, or other appropriate action.

TITLE	Procedure for dealing with allegations of research malpractice or misconduct	
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