

Managing Allegations Against Staff Policy

Safeguarding procedures for managing allegations against staff within schools and education services

Board Approved Date	October 2022
Version	0.2
Author Initials	TH
Review Date	October 2023

I. Reporting an allegation or a concern

- I.1 When an allegation of abuse is made against an employee on behalf of a child there should be immediate consideration of whether a child or children is/are at risk of significant harm and in need of protection.
- I.2 Any employee who becomes aware of a possible allegation, breach of position of trust and or professional conduct issue must take immediate steps to ensure the matter is reported to the Headteacher (or Deputy, if unavailable) who will immediately inform the CEO and Trust Safeguarding Lead. An investigation may be impeded if a concern is reported late and/or is communicated through several individuals before Headteacher and it is important that each school establishes at this stage who the lead contact will be for liaison purposes.
- I.3 Should the allegation or concern involve the Headteacher then the matter must be reported to the Chief Executive Officer. If the allegation is against the Chief executive Officer then the matter should be reported to the Chair of the Board of Directors.
- I.4 In all cases, the Headteacher must refer to the County LADO Service within 24 hours about the allegation or concern who will advise on further action in accordance with this procedure as appropriate. This is not the beginning of an investigation, but part of the basic information gathering process. This advice will include who should be made aware that an allegation or concern has been raised.
- I.5 The reporting member of staff must also seek the advice of the Trust's HR Director regarding issues of process, responsibilities and communication.
- I.6 It is important that the member of staff reporting the concern acts quickly. Establishing whether an allegation warrants further investigation or consultation is not the same as forming a view on whether the allegation is to be believed. The Headteacher or any other employee or Director to whom an allegation has been reported, is not expected to investigate the allegation, or interview pupils, but to assess, after consultation with the LADO how the matter will proceed. Confidentiality must be maintained throughout this stage in order that any subsequent investigation is not prejudiced and that the interests of all parties are protected.
- I.7 Where the allegation relates to the use of physical intervention to restrain a pupil (Section 93 of the Education and Inspections Act 2006 enables school staff to use such force as is reasonable to keep a situation safe), the Headteacher should refer to the County LADO Service as in all other cases and a subsequent discussion will be held about whether this may be appropriately managed within the school.

2. Considering whether suspension is appropriate

- 2.1 The suspension of an employee, particularly in situations of potential child protection allegations will have a significant impact on the individual and therefore it is essential that the facts of the case, as they are known, and alternative courses of action are carefully considered in deciding whether to suspend. The specific arrangements for the suspension of staff are set out in the Trust's disciplinary procedures, but it should be recognised that suspension is a neutral act to protect the interests of both parties and not an assumption of guilt. It is also essential that the Disciplinary Procedures are

followed in terms of providing appropriate support to the individual throughout the period of suspension.

- 2.2 The decision to suspend is taken by the Headteacher in consultation with the CEO (who will liaise with the Trust's HR Director) and not by the Police, CYPE or LADO. However, Social Care, in collaboration with other agencies, may advise the Trust and the school of any action recommended to ensure the protection of children, protection of employees and safeguarding of information.
- 2.3 Being suspended or asked to refrain from work can give rise to great anxiety for the individual subject to the allegations. They may fear that colleagues and others within the school/community will have interpreted the very act of suspension as an indicator of presumed guilt from an early stage and may feel particularly isolated and vulnerable.
- 2.4 Any member of staff subject to an allegation should be encouraged to seek advice and support at the earliest opportunity from their professional association or trade union. It must also be acknowledged that the whole school/community may be affected by a staff member's suspension, and consideration should be given to necessary support strategies to address this.
- 2.5 The need for support is equally applicable when considering a staff member's return to work. Suspension should be retained for as short a length of time as possible and if it is agreed a staff member is to return to school/work, careful planning needs to take place as to how this situation can be managed as sensitively as possible.

2.6 Initial considerations

It may not be immediately obvious that suspension should be considered, and this course of action sometimes only becomes clear after information is shared with, and discussion had, with other agencies.

In some cases, early or immediate suspension may impede a Police investigation, and therefore the decision whether to suspend may have to be delayed until sufficient evidence has been gathered. Suspension should be avoided in such cases wherever possible and should not be seen as an automatic response to an allegation. This applies to the possible suspension of Headteachers as well as other staff. Suspension should only follow discussion with the LADO. The decision to suspend remains the responsibility of the Headteacher in consultation with the CEO.

When considering suspension, it is important to have regard to the following factors:

- The nature of the allegation
- Assessment of the presenting risk
- The context in which the allegation occurred
- The individual's contact with children
- Any other relevant information
- The power to suspend
- Alternatives to suspension

Suspension should only be applied if one or more of the following grounds apply:

- A child or children would be at risk

- The allegation is so serious that summary dismissal for gross misconduct is possible
- It is necessary to allow any investigation to continue unimpeded

2.7 Alternatives to suspension

While weighing the factors as to whether suspension is necessary, available alternatives to suspension should be considered. This may be achieved by:

- Leave of absence
- Undertaking different duties which do not involve direct contact with the individual child or other children
- Providing a classroom assistant or other colleague to be present throughout contact time.

If the member of staff is not based in a school, then an alternative may be to:

- Undertake office duty
- Undertake non-contact tasks only

2.8 Action Plan

The Children Act 1989 established the principle that the interests of the child are paramount. This, however, must be considered alongside the duty of care to staff. Any individual subject to allegations should, regardless of the decision to suspend or otherwise, be offered welfare support. Where possible, a means of monitoring the take up and effectiveness of welfare support without compromising confidentiality or trust should be sought. Where suspension is being considered, the duty of care requires the Headteacher to ensure that appropriate support is available to the member of staff through consultation with the Trust's HR Director. In the case of an allegation against the Headteacher, this responsibility lies with the CEO. Agreement must be reached with the Trust's HR Director (and police where appropriate) as to how information will be shared and contact maintained with the member of staff throughout the investigative process. This should include agreement as to:

- How the member of staff will be kept updated about the progress of the investigation,
- How support and counselling are to be offered: and
- How links will be maintained with the school so that the staff member is kept informed of other matters occurring within the school.

2.9 Confidentiality

The Headteacher, CEO and Chair of the Board of Directors have a responsibility to safeguard confidentiality as far as is possible. Sensitive information must only be disclosed on a need to know basis with other professionals involved in the investigative process. Other people may become aware of the allegation and may not feel bound to maintain confidentiality. Therefore, consideration should be given on how best to manage information, particularly in relation to who should be told what, when and how. This is particularly relevant in respect of parents, carers and the media in light of new legislation and the anonymity clause (referenced in 1.4).

2.10 Planning and Recording

It is essential to record the decisions reached and the rationale behind them. Records should also be made of the agreed action and strategies to manage the situation. The plan should clearly indicate the following:

- Any restrictions to normal contact or activity,
- Issues of contact with children,
- Arrangements for monitoring and welfare support in relation to the member of staff.
- Monitoring the support available for the child.

It is important for the LADO to keep a record of the actions taken in the course of the investigation and, where relevant, the process and conclusion of suspension is undertaken as quickly and fairly as possible. If individuals have specific tasks or responsibilities to carry out, this should be noted and followed up. Agreed strategies for managing and sharing information should be included here. In addition, the member of staff should be informed of the decisions taken at the earliest opportunity by the employer

3. Disciplinary Investigation

- 3.1 No action under the disciplinary procedure should be taken in circumstances which might interfere with the criminal investigation. Child protection and criminal investigations shall be treated as paramount and any further action under disciplinary procedures may therefore have to await full completion of the child protection and criminal investigations but will be undertaken as soon as possible.
- 3.2 Once any child protection investigation has been completed and the matter is not proceeding to court, a decision should be taken by the appropriate person in the Trust, as whether to investigate under the disciplinary procedures. The school will need to liaise with the Trust's HR Director prior to reaching a decision on this.
- 3.3 At the request of the CEO a nominated representative may be appointed to conduct the investigation where it is inappropriate for the Headteacher or other member of the school's leadership group to do so, e.g., where the Headteacher knowledge might prejudice a fair hearing, where he/she is implicated or when the CEO believes it is in the best interests of the school.
- 3.4 Following the internal investigation the employer needs to come to a reasonably held view '**on the balance of probability**'. The disciplinary investigation must gather evidence objectively establishing the facts where possible and follow the principles of fairness, reasonableness and natural justice.
- 3.5 Where allegations of child abuse are received against an employee at the school, the LADO will take responsibility for ensuring that relevant information, as defined by the CYPE and or Police, resulting from a child protection investigation is made available to the Headteacher in order to inform a decision about a possible disciplinary investigation.

- 3.6 Evidence derived from the child protection investigation or criminal investigation (e.g., statements, exhibits, video-recorded interviews with children) can be requested for use in subsequent disciplinary proceedings, particularly where the witnesses are the same, via relevant legal departments. (It should be noted that the Branch Crown Prosecutor will be cautious about releasing any prosecution material until the criminal proceedings have been concluded and will only consider doing so upon a valid request being made in writing.)
- 3.7 Where no criminal prosecution is pending or intended, advice from the Devon and Cornwall Police Solicitor's Department on the release of material should be sought through the LADO who has established a protocol with the Devon and Cornwall Police on behalf of the LA to ease this process. Witnesses may include Police Officers and social workers who have interviewed the child/ren. CYPE should usually release the minutes of strategy meetings and, where necessary, provide additional reports.
- 3.8 Whether it is appropriate to call children as witnesses will depend on their age, understanding and capability. However, the attendance of children at any hearing would be in extremely unusual circumstances and will only occur following careful consultation with all interested parties including the parents of the child/ren.
- 3.9 If a decision is taken to proceed with a disciplinary investigation, the employee should be informed, in writing, as required under the disciplinary procedure. It is advisable to confirm this position in a meeting with the employee and their representative. The Trust's HR Director will compose the letter in consultation with the Headteacher.
- 3.10 If a decision is taken not to proceed with a disciplinary investigation, the employee should be invited to a meeting with a union representative or workplace colleague, to explain the circumstances of the decision and confirm this in writing. This meeting will be facilitated by the Headteacher who will be supported by the Trust's HR Director.
- 3.11 Those involved in the investigation of the complaint or the continuing management of the situation at the school cannot hear consequent disciplinary cases, since they may receive information that may prejudice a fair hearing of the complaint. Directors who are to hear disciplinary appeals must not be involved in the investigation of the complaint or the disciplinary hearing.
- 3.12 The school will need to make appropriate arrangements to notify the parent/guardian of the child/ren of the outcome of the investigation/hearing and will take advice from the Personnel provider/Trust HR lead and the County LADO Service regarding the nature of information that can be disclosed.

3.13 Time-scales

DfE guidance states that *“the quick resolution of the allegation should be a clear priority to the benefit of all concerned. Any unnecessary delays should be eradicated.”*

- a. If the nature of the allegation does not require formal disciplinary action, the Headteacher should institute appropriate action within **3 working days**.

- b. If the evidence indicates that a disciplinary hearing may be required, then the process will be completed as quickly as possible and without unavoidable delay within the requirements and timescales of the school's adopted disciplinary procedure. The employee must be kept regularly informed of the progress in this event.

4. Referral to the disclosure and barring service

The Secretary of State's powers to bar or restrict a person's employment are contained in section 142 of the Education Act 2002. The relevant regulations, setting out the procedure to be followed now sit under the Vulnerable Groups Act 2006 (List 99 was replaced by the ISA Barring list which in turn has now been replaced by the Disclosure and Barring Service)

A relevant employer, or agent (eg a teacher supply agency), is required to provide a report to the DBS where they cease to use a person's services, or a person is dismissed or resigns before a disciplinary process is completed, because they are considered unsuitable to work with children, as a result of misconduct, or because of a medical condition that raises a possibility of risk to the safety or welfare of children. A compromise agreement does not override the statutory duty to report the matter and such an arrangement should not be considered if the concern was of a safeguarding nature.

These reporting arrangements apply to anyone who works in a school, including volunteers, regardless of what they do. They also apply to staff convicted of a criminal offence against children outside the work setting, when notification may be through the police.

Anyone subject to a direction under section 142 of the 2002 Act given on the grounds that they are unsuitable to work with children is also disqualified from working with children. 'Work' includes people in unpaid employment, employed under contract, people undertaking work experience and volunteers.

There is an additional requirement that residential special schools report such matters to Ofsted. It is the responsibility of the employing body to make this referral, and to inform the individual of its' statutory duty to do so.

Further information on the Disclosure and Barring Service and the process of referral to the barring list can be found at www.homeoffice.gov.uk/dbs

5. Retention of records

- 5.1 The Information Commissioner Code of Practice: Employment Records 2002 states that "records of allegations about workers who have been investigated and found to be without substance should not normally be retained once an investigation has been completed. There are some exceptions to this where for its own protection the employer has to keep a limited record that an allegation was received and investigated, for example where the allegation relates to abuse and the worker is employed to work with children or other vulnerable individuals."

- 5.2 Records of investigations into alleged offences against children must be maintained, in order to identify patterns of concerns. A factual record of the details of all allegations and a written record of the outcome, will be retained. This information will be held by the County LADO Service in line with the responsibilities of the LADO function.
- 5.3 The employee and/or his/her representative will be informed that such records exist and will be able to seek disclosure within the parameters of the Data Protection Act by putting their request in writing through the appropriate channels.
- 5.4 Any records retained in relation to the outcome of the investigation and the member of staffs comments will be retained in line with Guidance provided by the Information Commissioners Office which states '*Until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer*'. It is important to note DfE Guidance states "cases in which an allegation was proven to be false, unsubstantiated, or malicious should not be included in an employer's reference.
- 5.5 Where a pupil has made an allegation, a copy of the statement or the record made of it, should be kept on the section of a pupil's child protection file, which is not open to disclosure, together with a written record of the outcome of the investigation. If there are related criminal or civil proceedings, records may be subject to disclosure; and, therefore, no assurances can be given on confidentiality. Any allegation made by a child that is deemed to be malicious after external scrutiny should be investigated further to establish what concerns led to such a situation developing. This is in the best interests of the child and the member of staff.

6. Good practice guidelines

All schools are required to establish a Code of Practice for all staff, which considers the following areas. The Teacher Standards document (2012) provides a clear outline of expectations.

- Out of school contact with pupils.
- Physical contact with pupils.
- Personal care of pupils.
- Relationships and attitudes.
- Extra curricular activity.
- Reporting of incidents.
- Risk Assessment and lone working
- Use of e-mail and mobile phones

'Guidance for Safe Working Practice for Adults who work with Children and Young People 2009' (published by the Allegations Management Advisors network on behalf of DCSF). This document can help to inform practice and can be accessed via the Child Protection and Safeguarding page on KELS.I.

7. Flow chart

CHILD PROTECTION – ALLEGATIONS AGAINST STAFF

