

Guidance for Schools, Academies Educational Establishments & Support Services Managers

Allegations of Abuse against Teachers and other Staff

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CONTENTS

PAGE

1. DEFINITIONS	1
2. INTRODUCTION	2
3. WHAT IS AN ALLEGATION?	3
4. SAFEGUARDING CHILDREN	4
5. ABUSE OF POSITION OF TRUST.....	5
6. POSITIVE PHYSICAL INTERVENTION.....	5
7. PROCEDURE FOR MANAGING ALLEGATIONS	5
8. REFERRAL TO AN INDEPENDENTLY CHAIRED STRATEGY MEETING.....	7
Attendance at the Strategy Meeting	7
Purpose of the Strategy Meeting	7
Outcome of the Strategy Meeting	8
9. EXTERNAL INVESTIGATIONS	8
10. MANAGING AN INTERNAL INVESTIGATION/THE DISCIPLINARY PROCESS.....	8
Disciplinary Hearing	9
11. SUPPORTING THOSE INVOLVED.....	9
12. SUSPENSION	9
13. SUPPLY, CASUAL OR VOLUNTEER WORKERS.....	11
14. COMMUNICATION WITH STAFF, GOVERNORS, PARENTS, CHILDREN AND THE MEDIA	12
15. FALSE, UNSUBSTANTIATED, UNFOUNDED OR MALICIOUS ALLEGATIONS	13
16. REFERRAL TO THE DISCLOSURE AND BARRING SERVICE (DBS) AND/OR TEACHING AGENCY	13
17. RESIGNATIONS AND COMPROMISE AGREEMENTS	14
18. TIMESCALES.....	14
19. RECORD KEEPING	15
20. REFERENCES	15
21. LEARNING LESSONS	15
APPENDIX 1 - SUMMARY OF INVESTIGATION INTO AN ALLEGATION OF ABUSE..	17
APPENDIX 2 - DISCIPLINARY HEARINGS – CONSIDERATION OF EVIDENCE	19
APPENDIX 3 - SUMMARY OF PROCESS AND OUTCOMES	21
APPENDIX 4 - CONTACTS	22
APPENDIX 4 - REFERENCES	22

1. DEFINITIONS

'Safeguarding' - process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances to enter adulthood successfully.

'Allegation' - information which comes to light, which suggests an employee, volunteer or contractor may have hurt or harmed a child, possibly committed a criminal offence against a child or has behaved in such a way towards a child or young person that they may be considered as unsuitable to continue their current employment or in any capacity which involves working with children.

'Headteacher' - refers to Headteacher/Principal who is the person responsible in schools, but the guidance applies to the Chair of Governors acting where an allegation is made against the Headteacher. It also refers to the Senior Manager responsible in relation to allegations against centrally employed members of staff or those employed in educational establishments other than schools.

'Chair of Governors' – refers to Chair of Board, Governors, Trustees/Chair of Management Committee, etc.

'Member of staff' - includes any adult, paid or voluntary, who is centrally employed or who works in a school or educational establishment.

LADO – Local Authority Designated Officer. The person responsible for providing advice and monitoring cases.

The terms **'child/ren'** and **'young person'** are interchangeable and refer to children who have not yet reached their 18th birthday.

'Working days' - refer to the days during which the school or educational establishment is open, including training days.

Disclosure and Barring Service (DBS) - a non-departmental public body set up to administer the vetting and barring scheme and criminal records checks.

'Regulated Activity' -

1. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice / guidance on well-being, or drive a vehicle only for children.
2. Work for a limited range of establishments ('specified places'), with opportunity for contact, for example schools, children's homes, childcare premises (but not work by supervised volunteers).

Work under (1) or (2) is Regulated Activity only if done regularly. Regular means carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period (or in some cases, overnight).

3. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once.
4. Registered childminding; and foster-carers.

Dealing with Allegations of Abuse against Teachers and other Staff

2. INTRODUCTION

This guidance applies to all 'staff members' whose work brings them into contact with children in an education setting. It therefore applies to all teachers (including supply teachers) and support staff, volunteers and other adults, whether paid or working in a voluntary capacity on or off school premises and sites.

In the case of an allegation against the Headteacher, the Chair of Governors (or in their absence the Vice Chair) is responsible for ensuring the process is followed.

This guidance relates to the action the Headteacher (or Chair of Governors in the case of an allegation against the Headteacher) must follow where an allegation has been made against a member of staff. The Headteacher **must not** delegate this responsibility. This guidance does not apply to Children's Social Care, which has separate procedures.

This guidance relates to the following legislation:

- The Children Act 1989
- Section 175 of the Education Act 2002 (local authorities, governing bodies of maintained schools and institutions in the further education sector)
- Section 157 of the Education Act 2002 and the Education (Independent School Standards (England) Regulations 2010
- The Children Act 2004
- Section 11 of the Children Act 2004 (other agencies)
- Sections 141F, 141G and 141H3 of the Education Act 2002.

The Worcestershire Safeguarding Children Board hold regular seminars to advise on the management of allegations against people who work with children. Those responsible for managing such allegations are strongly recommended to attend one. For further information go to www.worcestershiresafeguarding.org.uk.

All members of staff who work unsupervised with children in regulated activity are required to complete an Enhanced Criminal Records Bureau Disclosure to ensure suitability for working with children. It is an offence to employ anybody in regulated activity who has been barred from working with children by the Disclosure and Barring Service (DBS).

All staff and volunteers working in regulated activity must be given appropriate safeguarding training, which includes safer working practice and management of allegations, updated every three years.

All new members of staff and volunteers should be given guidance and training on safeguarding children, safer working practice and allegations of abuse in their induction.

All staff dealing with children requiring additional care (Care Plans, etc.) must have appropriate information and training.

3. WHAT IS AN ALLEGATION?

This guidance should be used in respect of all cases in which it is alleged that a member of staff in a school or other educational establishment that provides education for children under 18 has:

- behaved in a way that has harmed, or may have harmed a child;
- possibly committed a criminal offence against, or related to, a child;
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

When an allegation is made, it is important that you follow the procedures contained in this document immediately and **do not commence any internal investigation** until agreement is given to proceed.

The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may well either not meet the criteria set out above at all, or may do so without warranting consideration of a police investigation or enquiries by Local Authority Children's Services. In these cases local arrangements should be followed to resolve cases quickly and without delay.

It is important to ensure that even apparently less serious allegations are seen to be followed up, and that they are examined objectively by someone independent of the organisation, i.e. the Senior Adviser for Safeguarding Children in Education or Local Authority Designated Officer (LADO). **Maintained, Academy and Independent schools all have a statutory duty to report allegations to the Local Authority.**

It is essential that any allegation of abuse made against a teacher, other member of staff or a volunteer in an education setting is dealt with fairly, quickly and consistently, in a manner which provides effective protection for the child and also supports the person who is the subject of the allegation.

Headteachers may also seek the advice of the Senior Adviser where an employee's behaviour is a matter of concern to his/her manager because it compromises or may be seen to compromise the reputation and ability of the organisation to safeguard children. Some examples of this may be where an individual has:

- contravened or continued to contravene any safe practice guidance given by his/her organisation or regulatory body
- exploited or abused a position of power
- acted in an irresponsible manner which any reasonable person would find alarming or questionable given the nature of work undertaken
- demonstrated failure to understand or appreciate how his or her own actions or those of others could adversely impact on the safety and well being of a child
- demonstrated an inability to make sound professional judgements which safeguard the welfare of children

- failed to follow adequately policy or procedures relating to safeguarding and promoting the welfare of children
- failed to understand or recognise the need for clear personal and professional boundaries in his or her work
- behaved in a way in his/her personal life which could put children at risk of harm
- become the subject of criminal proceedings relating to a child
- become subject to enquiries under local child protection procedures
- behaved in a way which seriously undermines the trust and confidence placed in him or her by the employer.

When an allegation has been made consideration will be given to whether:

- any action is needed;
- a Police investigation of a possible criminal offence is required;
- enquiries and assessment by Children's Services Social Care are required about whether a child is in need of protection or in need of services;
- disciplinary action or other sanction may be necessary.

In some circumstances, following the outcome of an investigation/Police action, it may be necessary to report the member of staff to the Disclosure and Barring Service (DBS) for consideration of inclusion on their barred lists and for referral to the Teaching Agency or Department for Education.

4. SAFEGUARDING CHILDREN

Educational establishments play an important part in the prevention and detection of abuse and neglect, through their own policies and procedures for safeguarding children, creating and maintaining a safe environment, and through the curriculum. They promote resilience in children by helping them to stay safe from harm and encouraging them to talk to someone if they have worries or concerns. Staff members play a crucial role in this process in noticing indications of abuse or neglect and in reporting concerns to Children's Services Social Care. But in rare circumstances staff in educational establishments have been found to be responsible for child abuse. Given their daily contact with children in a variety of situations, staff are also vulnerable to accusations of abuse, leading to allegations from children, parents or other staff members.

These allegations must be taken seriously, and while they may be found to be false, malicious or unfounded, they may also be well founded. Children or parents may make a direct referral to the Police or Children's Services Social Care, who will discuss the allegations with the Senior Adviser for Safeguarding Children in Education or LADO.

5. ABUSE OF POSITION OF TRUST

All adults working with children and young people are in a position of trust in relation to the young people in their care.

Where a person aged 18 or over is in a specified position of trust with a child under 18 it is an offence for that person to engage in sexual activity with or in the presence of that child or to cause or incite that child to engage in or watch sexual activity.

For further information see guidance on the Sexual Offences Act 2003 at www.legislation.gov.uk.

6. POSITIVE PHYSICAL INTERVENTION (PPI)

Where an allegation is made involving the use of physical intervention, consideration should be given to whether the action taken was necessary and proportionate.

Where an incident relates to the use of reasonable force to restrain a child, it will be appropriate for the Headteacher to deal with this in accordance with school/establishment procedures, following guidance in the Use of Force to Control or Restrain Pupils (DCSF04 2010) and Positive Behaviour Team Guidance: The use of Positive Physical Intervention - Care and Control and the Use of Force (Sept 2011).

All such incidents should be reported, recorded and discussed with parents as soon as possible in line with the school policy.

If an allegation of assault is made following a restraint, this must be seen as a child protection matter, discussed with the Senior Adviser for Safeguarding Children in Education and referred to the Access Centre in accordance with this procedure.

If in doubt, the Headteacher should consult with the Senior Adviser for Safeguarding Children in Education to establish whether the use of force was necessary and proportionate.

Guidance on the use of Positive Handling can be found at <https://www.edulink.networcs.net/sites/LeadManage/PositiveBehaviour/default.aspx>

7. PROCEDURE FOR MANAGING ALLEGATIONS

Allegations may be made directly to the Headteacher by children, parents, members of staff or other persons. In some instances allegations are made directly to the Police, who will inform Children's Services Social Care if they believe the allegation meets the threshold for referral. The Senior Adviser will contact the Headteacher to discuss the allegation and advise on the action needed.

All staff have a responsibility to report a member of staff they believe is 'harming' or using unacceptable behaviour towards a child, to the Headteacher. Where a child or adult reports concerns to a member of staff, they must be listened to and taken seriously. The member of staff **must not attempt to investigate the allegation**, but inform the Headteacher and provide a full written and dated account of what has been reported.

The Headteacher should inform the Senior Adviser for Safeguarding Children in Education of all allegations **on the same day** or next working day. Church Schools should also inform their Diocesan Boards of allegations.

The Headteacher must not take any action, commence an investigation, or inform the member of staff of the allegation before consulting with the Senior Adviser for Safeguarding Children in Education, but may make basic enquiries to determine whether the allegation could possibly have occurred or to establish the facts of the allegation, if these were unclear, e.g.

- was the child/staff member in school on that day?
- could the child have had contact with the staff member?
- could there have been any witnesses?

In the first instance, the Headteacher should immediately discuss the allegation with the Senior Adviser. If unavailable the LADO should be contacted. The purpose of an initial discussion is for the Senior Adviser and the Headteacher to consider the nature, content and context of the allegation and agree a course of action. The Senior Adviser may ask the Headteacher to provide or obtain any additional information which may be relevant such as previous history, whether the child or their family have made similar allegations and the individual's current contact with children. This initial sharing of information and evaluation may lead to a decision that no further action is to be taken in regard to the individual facing the allegation or concern, in which case this decision and a justification for it should be recorded, by both the Headteacher and the Senior Adviser, and agreement reached as to what information should be put in writing to the individual concerned and by whom. The Headteacher should then consider with the Senior Adviser what action should follow in respect of the individual and those who made the initial allegation.

The Headteacher should inform the staff member about the allegation as soon as possible **after** consulting the Senior Adviser. He or she should provide them with as much information as possible at the time. However, where a strategy discussion is needed, or police or Children's Services Social Care services need to be involved, the senior manager **should not** do that until those agencies have been consulted and have agreed what information can be disclosed to the person. Employers must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children at the school until the allegation or concern is resolved (see section on Suspension). If the allegation is not demonstrably false or unfounded, and there is cause to suspect a child is suffering or is likely to suffer significant harm, a strategy discussion should be convened in accordance with '*Working Together to Safeguard Children*'.

Where it is clear that an investigation by the police or Children's Services Social Care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the Senior Adviser should discuss the next steps with the Headteacher. In those circumstances the options open to the school depend on the nature and circumstances of the allegation and the evidence and information available, and will range from taking no further action to disciplinary action, up to and including summary dismissal or a decision not to use the person's services in future.

8. REFERRAL TO AN INDEPENDENTLY CHAIRED STRATEGY MEETING

When an allegation has been referred to and accepted by the Children's Services Access Centre a Strategy Meeting will be convened as soon as practicable.

The purpose of the Strategy Meeting is to consider the allegation or concern and decide on what action, if any, needs to follow. It is Chaired by the LADO.

The member of staff who is the subject of the allegation will not be invited to the meeting. However, the member of staff should normally be informed of the outcome and whether the matter will be investigated, at a time and in a form agreed at the meeting and as soon as possible after the meeting, unless prior knowledge may prejudice a police investigation.

Attendance at the Strategy Meeting

- Children's Services DAT (Duty & Assessment Team) Manager or Consultant Social Worker.
- Police Public Protection Unit.
- Senior Adviser for Safeguarding Children in Education.
- Headteacher (or Chair of Governors where allegation is against the Headteacher).
- Church Diocesan Officer, as appropriate.
- Human Resources Adviser, when the allegation is against the Headteacher or is so serious that it is likely to lead to a formal investigation and/or dismissal.
- Representative of other Local Authorities where relevant, e.g. if the child is residing outside their 'home' authority in a residential school, foster placement, etc. or the staff member works in more than one authority or lives and works in different authorities.
- Any other relevant professional who has information or professional expertise, which could assist the meeting, e.g. health professional.

Purpose of the Strategy Meeting

- Consider the allegation or concern and any previous allegations.
- Consider the risk to the child/other children within or outside the workplace.
- Gather information.
- Determine the need for a child protection enquiry and/or criminal investigation (joint or single agency).
- Establish a clear action plan with timescales.
- Decide who to inform and when.
- Make recommendations that suspension, disciplinary, competency, regulatory or complaint procedures be undertaken.
- Consider the need to inform other relevant parties.
- Agree criteria for a re-referral if new evidence comes to light in any 'internal' procedure which suggests a further Strategy Meeting is needed.

Outcome of the Strategy Meeting

Following consideration of the allegation and other relevant information, the following courses of action may be agreed:

- no further action
- a Police investigation of a possible criminal offence
- enquiries and assessment by Children's Services Social Care about whether a child is in need of protection or in need of services
- an internal Local Authority/school investigation which may lead to management guidance/training and/or disciplinary procedures.

9. EXTERNAL INVESTIGATIONS

Where the Police or Social Care are investigating an allegation, a LA/school internal investigation is normally held in abeyance until the outcome is known. However, in consultation with the Police an internal investigation may be conducted in parallel.

Investigations should be conducted as quickly as possible and the member of staff given regular progress updates.

10. MANAGING AN INTERNAL INVESTIGATION/THE DISCIPLINARY PROCESS

Following completion of an external investigation or if the matter is not pursued by the Police or Children's Services Social Care, an allegation against a member of staff may require an internal investigation to determine whether disciplinary action is needed. Disciplinary action should not be taken until the alleged misconduct has been properly investigated.

An investigation will normally involve an interview with the member of staff concerned who may be accompanied by a colleague or trade union representative. The Senior Adviser for Safeguarding Children in Education and/or Human Resources will support the Headteacher throughout this process.

The investigation may conclude that:

- no further action is required
- it may be appropriate to offer support or further training
- it would be appropriate to give management guidance in order to register concerns, without recourse to disciplinary action
- a referral to the formal disciplinary procedure is needed.

Disciplinary Hearing

Please refer to Worcestershire County Council '*Guidelines on the Use of Disciplinary Procedure*' available on EduLink or from Children's Services Human Resources or the school's own disciplinary procedures, or relevant Diocesan Procedures.

See Appendix 2 for Guidance on the consideration of evidence.

11. SUPPORTING THOSE INVOLVED

It is important that the member of staff is supported throughout this process, kept informed of the course of the investigation and advised of other support available.

The school should appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual.

Trade Union - The member of staff subject to the allegation should be advised to contact their trade union or professional association for support, including legal support. If a member of staff is interviewed by the Police they can ask for their union solicitor to be present, if applicable.

If the member of staff is not a member of a trade union, support in the form of providing advice on the procedure may be available from a Human Resources Adviser not involved in the case, but that Adviser will not be able to make representations on behalf of the member of staff.

Support for Colleagues - Concerns are sometimes raised by colleagues who have witnessed behaviour that they consider to be abusive or inappropriate. It is important to enable staff to disclose their views without fear of retribution, even if the concerns are subsequently unsubstantiated. Such staff should be supported in accordance with the County Council's or school's Confidential Reporting (Whistleblowing) Policy.

Occupational Health Service - Support is also available through the County Council's Occupational Health Service, through the confidential counselling service or by a referral to an adviser or a doctor. Human Resources will be able to arrange a referral.

12. SUSPENSION

When an allegation is made against a member of staff, the possible risk of harm posed should be evaluated and managed. It may be necessary to consider whether the member of staff should be asked to refrain from work or suspended for the duration of the investigation.

Suspension should not be an automatic response when an allegation is reported; all options to avoid suspension should be considered prior to taking that step. Based on assessment of risk, the following alternatives should be considered by the case manager before suspending a member of staff:

- redeployment within the school so that the member of staff does not have direct contact with the child or children concerned;
- providing an assistant to be present when the member of staff has contact with children;
- redeploying to alternative work in the school so the member of staff does not have unsupervised access to children;
- moving the child or children to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted;
- temporarily redeploying the member of staff to another role in a different location; or
- paid leave of absence; mutual agreement to refrain from work.

Where it is deemed there is no alternative, suspension should only be considered on the following grounds:

- where a child or children are deemed to be at risk;
- where suspension is necessary to ensure the investigation is not impeded or prejudiced;
- where the allegation is of an exceptionally serious nature that dismissal for gross misconduct is a possible outcome.

If suspension is considered necessary, the rationale and justification for such a course of action should be agreed and recorded. This should also include what alternatives to suspension have been considered and why they were rejected.

Written confirmation should be sent to the member of staff within one working day, giving as much detail as appropriate for the reasons for the suspension.

Suspension is a neutral act and is intended as a safeguard for both the child and the member of staff concerned. However, being suspended or asked to refrain from work can cause great anxiety to the person and also impact on colleagues.

The decision to suspend is made by the Headteacher or Head of Service after taking advice from the Senior Adviser for Safeguarding Children in Education or Human Resources. A Strategy Meeting may recommend suspension which will need to be seriously considered.

Only the Head of Service, for centrally employed staff, or Principal of an Academy can impose or lift a suspension. In maintained schools the Headteacher can authorise a suspension of a member of staff, but only the Governing Body of the school has the power to lift a suspension.

Review of Suspension

Suspension will be on full pay and the lifting of the suspension may be considered at any time during the proceedings. The suspension should be reviewed every 15 working days or at a mutually agreed time and the member of staff given the opportunity to attend a meeting to discuss the suspension. It would not be appropriate to discuss the allegation itself, but determine whether the suspension is still necessary.

Support for Suspended Member of Staff

Employers have a duty of care to their employees and should act to manage and minimise the stress inherent in the allegations process. The suspended member of staff should be given the name of a person, as an information contact to keep them updated on the progress of the investigation and consider what other support is appropriate.

A colleague contact or link person within school should be arranged to keep the member of staff updated on any work-related changes. The type of information and frequency of contact should be agreed, but colleagues should not comment on or discuss the investigation.

Social contact with colleagues and friends must not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

In cases where it is decided on the conclusion of the case that a person who has been suspended can return to work, the school should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a very stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The school should also consider how the person's contact with the child or children who made the allegation can best be managed if they are still a pupil at the school.

13. SUPPLY, CASUAL OR VOLUNTEER WORKERS

In some circumstances the school at which a person works will need to consider an allegation where the person does not have an ongoing employment contract with them, for example: supply teachers, casual/agency workers, volunteers or contractors. It may be necessary to act jointly with another organisation or service provider.

In these cases the normal disciplinary procedures will not apply, but it is necessary to investigate the allegation, reach a decision about whether to continue with the person's services and whether a referral to the DBS is needed. Contact Human Resources for further advice.

When the allegation has been made it will be necessary to consider whether that person should be prevented from working in any school/educational establishment until the outcome of the investigation is known.

14. COMMUNICATION WITH STAFF, GOVERNORS, PARENTS, CHILDREN AND THE MEDIA

It is important that every effort is made to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated. Details of the complaint should not be discussed with members of staff or Governors, although the Headteacher may wish to inform the Chair of Governors that an allegation is being investigated.

Similarly, when an allegation concerns the Headteacher the Chair of Governors investigating the matter should not inform or discuss the allegation with the full governing body, but may wish to take advice from Governor Services or the establishment's Human Resources Adviser.

Consideration should be given to:

- who needs to know and, importantly, exactly what information can be shared;
- how to manage speculation, leaks and gossip;
- what, if any information can be reasonably given to the wider community to reduce speculation; and
- how to manage press interest if and when it should arise.

In the event of educational establishments or schools, other than academies receiving media enquiries, the County Council's Press Officer should be contacted for advice on the timing and content of a press statement. (Church Schools may also need to contact the Diocesan Press Officer.) Academies should consult with their legal advisers when preparing a press statement.

The Education Act 2011 introduced reporting restrictions preventing the publication of any material that may lead to the identification of a teacher who has been accused by, or on behalf of, a pupil from the same school (where that identification would identify the teacher as the subject of the allegation).

"Publication" includes "any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public". This means that a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public).

If the parents or carers of a child or children involved are not aware of the allegation they should be advised of the allegation as soon as possible, after discussion with the Senior Adviser for Safeguarding Children in Education. In circumstances in which the Police or Social Care may need to be involved, the Senior Adviser will consult those colleagues about how best to inform parents. In some circumstances the school may need to advise parents of an incident involving their child straight away, for example if a child has been injured while at school or in a school related activity and requires medical treatment.

Parents/carers should be kept informed of the progress of the case and told the outcome where there is not a criminal prosecution. The deliberations of a disciplinary hearing and the information taken into account in reaching a decision, should not normally be disclosed.

15. FALSE, UNSUBSTANTIATED, UNFOUNDED OR MALICIOUS ALLEGATIONS (See Appendix 1 for definitions)

The Headteacher/Police/Strategy Meeting may conclude, without or following an investigation, that an allegation is unfounded. In this case the Headteacher in consultation with the Senior Adviser Safeguarding Children in Education should:

- Refer any unfounded allegations to the Access Centre to determine whether the child concerned is in need of services, or may have been abused by someone else.
- Inform the member of staff orally and in writing that no further action is being taken against them under child protection or disciplinary procedures.
- Offer counselling and/or professional support to the member of staff, as appropriate.
- Inform the parents of the child/ren of the allegation that it has been dealt with appropriately. Parents do not have the right to know the detail of any investigation.
- Consider appropriate support for the person who made the allegations.

In the event that the allegation is made by someone external to the school, the Police should be asked to consider whether any action might be appropriate against the person responsible.

Discussions should take place on how to support the member of staff if the allegation was made by a child within the school. This may include moving classes and/or providing another adult to work in the class.

Pupils that are found to have made malicious allegations are likely to have breached school behaviour policies. The school should therefore consider whether to apply an appropriate sanction, which could include temporary or permanent exclusion (as well as referral to the police if there are grounds for believing a criminal offence may have been committed). In September 2010 The Crown Prosecution Service provided guidance on harassment under the Protection of Harassment Act 1997. This can be found at: <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/018-2012/>.

16. REFERRAL TO THE DISCLOSURE AND BARRING SERVICE (DBS) AND/OR TEACHING AGENCY

If the allegation is substantiated and the person is dismissed or the school ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the Senior Adviser/LADO should discuss with the school and its HR Adviser whether a referral to the Disclosure and Barring Service (DBS) for consideration of inclusion on the barred lists or to the Teaching Agency is required.

There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child or if a person otherwise poses a risk of harm to a child. In such circumstances, the duty to refer an individual to the DBS arises where an employer has removed the individual from relevant work with children or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. Professional misconduct cases should be referred to the relevant regulatory body. The DBS will consider whether to bar the person from working in regulated activity, which will include work in schools and other educational establishments. Local authorities, schools, academies and other bodies all have a statutory duty to make reports, and to provide relevant information to the DBS. Referrals should be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services. This is from the date of dismissal not the date of the appeal hearing. Human Resources will provide further details on this process, where applicable.

17. RESIGNATIONS AND COMPROMISE AGREEMENTS

The fact that a member of staff tenders his/her resignation, or ceases to provide his/her services, must not prevent an allegation being followed up under these procedures. It is important that every effort is made to reach a conclusion and wherever possible, the member of staff is given the opportunity to answer the allegations and make representations before a conclusion is reached.

But the process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be substantiated on the basis of all the information available, should continue even if that cannot be done or the accused does not co-operate.

Compromise agreements, whereby a member of staff agrees to resign and the school/establishment agree not to pursue disciplinary action and may agree a form of wording to be used in a future reference, **must not** be used where the person is the subject of an allegation. Any agreement would not in any event prevent a Police investigation, where appropriate, nor override the statutory duty to report the case to the DBS, where applicable.

18. TIMESCALES

It is in everyone's interests to resolve cases as quickly as possible without unnecessary delay, whilst enabling a fair and thorough investigation to take place. The time taken to investigate and resolve individual cases will depend on the seriousness and complexity of the investigation.

Working Together to Safeguard Children states that it is reasonable to expect that 80% of cases should be resolved within one month, 90% within three months, and all but the most exceptional cases should be completed within twelve months.

If a disciplinary hearing is required and can be held without further investigation the hearing should be held within 15 working days.

Cases Subject to Police Investigation

Where a case is subject to Police investigation, the Police should aim to complete their enquiries as quickly as possible, consistent with a fair and thorough investigation and keep the progress of the case under review. The national safeguarding guidance states that wherever possible a review should take place no later than 4 weeks after the initial action meeting and if the investigation is still continuing, dates for subsequent reviews be set.

However, staff need to be aware that allegations that require the forensic examination of computers or other IT equipment is likely to take several months.

When the Police involvement is ended the guidance recommends that all information which may be relevant to a disciplinary case should be passed to the employer. The Police investigating officer may need to seek authorisation before releasing documents and statements, which may delay the process. Where a conviction takes place the Police should also inform the employer. The Senior Adviser for Safeguarding Children in Education will liaise with the designated Police officer to obtain this information.

19. RECORD KEEPING

It is important that a clear and comprehensive summary of the allegation and outcome (see Appendix 1) is kept on the member of staff's confidential personal file and a copy provided to the member of staff. This will ensure that accurate information is given in response to a future DBS Disclosure or a reference request and prevent unnecessary reinvestigation.

Details of allegations that are found to have been malicious should be removed from personnel records.

The safeguarding guidance recommends that the record should be retained at least until the member of staff has reached normal retirement age or for a period of 10 years from the date of the allegation, if longer.

The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention.

Other agencies involved in any investigation and the LA will keep their own records of the allegation.

20. REFERENCES

Cases in which an allegation was proven to be false, unsubstantiated, unfounded or malicious should not be included in employer references. A history of repeated concerns or allegations which have all been found to be unsubstantiated, malicious etc. should also not be included in any reference.

21. LEARNING LESSONS

At the conclusion of a case in which an allegation is substantiated the Senior Adviser/LADO should review the circumstances of the case with the Headteacher, to determine whether there are any improvements to be made to the school's procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified.

Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The Senior Adviser and Headteacher should consider how future investigations of a similar nature could be carried out without suspending the individual.

HR201/SD
January 2013

**SUMMARY OF INVESTIGATION
INTO AN ALLEGATION OF ABUSE AGAINST**

Name:

Establishment:

Explanatory Statement

This statement is made in accordance with Safeguarding Children and Safer Recruitment in Education.

There is a requirement to keep a clear and comprehensive summary of allegations, how the allegation was followed up and resolved, and a note of any action taken and decision reached. This should be kept on a member of staff's confidential personnel file, a copy provided to the person concerned and a copy held centrally by the Senior Adviser for Safeguarding Children in Education.

The purpose of this record is to enable accurate information to be given in response to any future request for a reference and will provide clarification in cases where a future DBS Disclosure reveals information from the Police about an allegation that did not result in a criminal conviction. It will also help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

This record should be retained at least until the member of staff has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

Summary of Allegation made, including date:

How Allegation was followed up:

Outcome of Investigation*:

Action taken and decisions reached:

Signed:
(Adviser for Safeguarding Children in Education/
Local Authority Designated Officer)

Signed:
(Headteacher/Manager)

Date:

I have been fully informed of the investigation.

Signed:
(Member of staff)

Date:

DEFINITIONS

- (a) **Substantiated:** there is sufficient identifiable evidence to prove the allegation;
- (b) **False:** there is sufficient evidence to disprove the allegation;
- (c) **Malicious:** there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;
- (d) **Unfounded:** there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances;
- (e) **Unsubstantiated:** this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

(* These definitions are taken from *Dealing with Allegations of Abuse against Teachers and Other Staff – Guidance for Local Authorities, Head Teachers, School Staff, Governing Bodies and Proprietors of Independent Schools DfE 2012.*)

DISCIPLINARY HEARINGS – CONSIDERATION OF EVIDENCE

The disciplinary Decision Maker(s) must have regard to all the evidence presented to them and decide on the balance of probabilities¹:

- (a) Whether the person's behaviour has posed, or could pose, a risk to children to whom the organisation has a duty of care; and/or
- (b) Whether the behaviour has compromised, or could be seen to have compromised, the ability and reputation of the organisation to safeguard children by failure to uphold the standards expected of the employee.

The absence of any criminal investigation, charge or conviction is not an adequate defence for the adult who is subject to a disciplinary hearing. There may be evidence contained within the disciplinary investigation which leads the employer to question the suitability of the person to continue to work in a position of trust within the organisation even when no criminal activity has been identified or a criminal investigation has not led to a charge or a case has been brought before a court but there has been no conviction.

Children should not be expected to attend a disciplinary hearing. In some cases a young person may clearly express a wish to contribute by giving evidence in person, and in such cases should be accompanied by a responsible adult whose role will be to ensure that his or her rights are observed.

The burden of proof in disciplinary proceedings requires that the evidence provided demonstrates that, on the balance of probabilities, there is a strong likelihood that the individual is unsuitable for his or her current position.

The panel's decision should not be influenced by concerns about whether, at a later stage, the individual may or may not be barred from working with children. Neither should concerns about any possible appeal process influence its decision.

The disciplinary decision makers should:

- Always act reasonably and in good faith in the interests of the child and the employee.
- Have no prior involvement that might prejudice their ability to hear the case fairly.
- Adjourn for further information or advice where necessary.
- Reach a decision based on a full consideration of all evidence with sufficient regard having been given to any explanation offered by the employee for his/her behaviour.
- Understand that the organisation must have a priority to safeguard children.

¹ 'Balance of probabilities' means that it is more likely to be the case than not based on the evidence available. This is a lower threshold than 'beyond reasonable doubt' which is used in a court of law.

SUMMARY OF PROCESS AND OUTCOMES

Initial Consideration of an Allegation

When an allegation is made to an adult:

- it should always be taken seriously
- what is said should be clarified not questioned
- a record should be made of what is said, using the actual words as far as possible
- where necessary, any immediate medical needs should be addressed
- the allegation must be reported immediately to the Headteacher/Manager (or Chair of Governors in the case of an allegation against the Headteacher)
- do not promise confidentiality, but explain what will happen next.

Initial Action by the Headteacher/Manager

- Consult the Senior Adviser for Safeguarding Children in Education immediately who will advise on the appropriate course of action.
- Consider the facts as they have been presented.
- Collect any written accounts, if applicable.

The Headteacher and Senior Adviser must consider the allegation and determine the appropriate way forward. The Headteacher should not investigate further or interview anyone and should not talk to any unauthorised person about the allegation.

The Senior Adviser will consider informing parents, informing the individual whom the allegation has been made against, and discuss the appropriate course of action with the Headteacher.

In some cases the Police may request that the member of staff against whom the allegation is made, is not told of the allegation in case their prior knowledge may prejudice a Police investigation. This should only occur following a serious allegation or an allegation involving the use of technology (e.g. laptop or mobile phone).

Possible Outcomes

In discussion with the Headteacher the Senior Adviser may recommend:

- An immediate referral to Children's Services Social Care through the Access Centre, who may call a joint services Strategy Meeting.
- Further local enquiries to gather more information/clarification.
- The allegation may not constitute a child protection issue, but could be perceived as inappropriate behaviour by a member of staff warranting investigation by the school under disciplinary procedures. HR can advise on the process.
- The allegation was false or unfounded, including a finding that reasonable force was used.

The process for managing an allegation against centrally employed staff and those in schools/educational settings

Headteacher/Manager/
Chair of Governors

- Log action and information
- DO NOT tell anyone, not even staff involved
- DO NOT investigate or interview

Consult with Senior Adviser for Safeguarding Children in Education/LADO

Incident definitely did not happen

Allegation without
foundation **

Action is not abusive

Children's Services and/or
school investigation **

Informal action

Disciplinary
process

Action may be abusive

1. Consider suspension
2. Refer to Access Centre
3. Inter-agency Strategy Meeting convened

Investigation by Social
Care and/or Police **

- NFA by Police/ Social Care
- Criminal investigation

Consider:

- why the allegation was made and his/her future management
- should an inter-agency referral be made?
- support for the adult

**** Member of staff is offered counselling through WCC Occupational Health Service and encouraged to contact their union**

CONTACTS

Senior Adviser for Safeguarding Children in Education	01905 728902 07809 665973
Local Authority Designated Officer (LADO)	01905 752800
Children's Services Human Resources	01905 766188
Children's Services Access Centre	01905 768054
Out of Hours Emergency Duty Team	01905 768020
Police Public Protection Unit: Emergency	0300 333 3000 999

REFERENCES

- Dealing with allegations of abuse against teachers and other staff, Guidance for Local Authorities, Headteachers, School Staff, Governing Bodies and Proprietors of Independent Schools. - DfE 2012
- Guidance for Safer Working Practice for Adults who work with Children and Young People in Education Settings – DCSF March 2009 – IRSC March 2009
- Safeguarding Children and Safer Recruitment in Education – DfE 2007 (Chapter 5)
- Working Together to Safeguard Children – HMSO 2010 (Appendix 5)

For further reference please see:

- Local procedures contained on The Worcestershire Safeguarding Children Board website: www.worcestershiresafeguarding.org.uk
- Disclosure and Barring Service: www.homeoffice.gov.uk/dbs