
Title of Policy/Procedure Managing allegations against staff policy

Reviewer(s): Head of HR

**To be read in conjunction
with the following
policies:** N/A

Consultation Process A consultation has taken place with the Finance,
Personnel and Resources Committee

Policy Date: 1 September 2020

Review Date: 1 September 2021

**This policy has been
ratified by (please delete
as appropriate:**

- ~~Board of Trustees~~
- ~~Education Standards and Strategy Committee~~
- Finance, Personnel and Resources Committee
- ~~Risk, Audit and Strategy Committee~~

INTRODUCTION

It is the responsibility of the Board of Directors, Trust Safeguarding Lead and Headteachers to ensure that all employees are aware of their responsibility to report any allegation or possible concern of a child protection nature. Failure to report may put a child at risk and could potentially imply a breach of the employee's contractual duty. Staff must be aware of this procedure, understand their responsibilities and know where a copy of the procedure is to be found in each school.

This procedure has been informed by 'Working Together to Safeguard Children – 2018', 'Keeping Children safe in education 2020' statutory guidance and Swindon Safeguarding Partnership procedures.

1. Allegations dealt with by these procedures

This guidance is about managing cases of where an allegation has been made that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children. It should be used in respect of all cases in which it is alleged that a member of staff, an agency supply worker or volunteer in a school that provides education for children under 18 years of age has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- 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.
- behaved or may have behaved in a way that indicates that they may not be suitable to work with children

These behaviours should be considered within the context of the four categories of abuse: physical, sexual, emotional abuse and neglect.

Allegations can be made in relation to physical chastisement and restraint but can also relate to inappropriate relationships between members of staff and children and young people:

- having a sexual relationship with a child under 18 if in a position of trust in respect of that child, even if consensual (see sections 16 – 19 Sexual Offences Act 2003);
- 'grooming' i.e. meeting a child under 16 with intent to commit a relevant offence (see section 15 Sexual Offences Act 2003);
- other 'grooming' behavior giving rise to concerns of a broader child protection nature e.g. inappropriate text / e-mail messages or images, gifts, socialising etc;
- possession of indecent photographs / pseudo-photographs of children.

In addition, these procedures should be applied when there is an allegation that any person who works with children:

- Has behaved in a way in their personal life that raises safeguarding concerns. These concerns do not have to directly relate to a child but could, for example, include arrest for possession of a weapon;
- As a parent or carer, has become subject to child protection procedures;
- Allegations are made against a 16 or 17 year old who has been put in a position of trust by a school or college in relation to anyone under the age of 18.

Where an allegation is made against a supply/agency teacher these procedures will apply. Whilst the Trust will take the lead role in the discussions on any referral to the LADO the agency will be fully involved and engaged in the process. Schools across the Trust will make any supply agencies aware of the allegations management process.

Staff and volunteers should feel able to raise concerns about poor or unsafe practice and potential failures in the school's safeguarding regime. Appropriate whistleblowing procedures, which are suitably reflected in staff training and staff behavior policies, should be in place for such concerns to be raised with the school management team.

2. The difference between an allegation and a concern

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, or may do so without warranting consideration of either a police investigation or enquires by local authority children's social care services.

It might not be clear whether an incident constitutes an 'allegation'. It is important to remember that in order to be an allegation the alleged incident has to be sufficiently serious as to suggest that harm has or may have been caused harm to a child/ren or that the alleged behaviour indicates the individual may pose a risk of harm to children or may not be suitable to work with children (see criteria above). Issues that do not meet this threshold may constitute conduct or disciplinary issues and should be addressed through the appropriate informal or formal procedures.

If it is difficult to determine the level of risk associated with an incident the following should be considered:

- Was the incident a disproportionate or inappropriate response in the context of a challenging situation?
- Where the incident involved an inappropriate response to challenging behaviour, had the member of staff had training in managing this?

- Does the member of staff understand that their behaviour was inappropriate and express a wish to behave differently in the future? For example, are they willing to undergo training?
- Does the child or family want to report the incident to the police or would they prefer the matter to be dealt with by the employer?
- Have similar allegations been made against the employee – is there a pattern developing?

Incidents which fall short of the threshold could include an accusation that is made second or third hand and the facts are not clear, or the member of staff alleged to have done this was not there at the time; or there is confusion about the account.

Whether an incident constitutes an allegation and hence needs to be dealt with through these procedures, may need to be discussed by the Local Authority Designated Officer (LADO) and the School's safeguarding lead. If it falls short of this threshold there may still be a role for the LADO to provide advice and support to the employer. Where the matter constitutes a conduct or performance issue, the Trust will follow the appropriate disciplinary procedures and let the LADO know of the outcome.

3. Initial action by person receiving or identifying an allegation or concern

The person to whom an allegation or concern is first reported should treat the matter seriously and keep an open mind. They should not:

- Investigate or ask leading questions if seeking clarification
- Make assumptions or offer alternative explanations
- Promise confidentiality, but they can give assurance that the information will only be shared on a 'need to know basis'

They should:

- Make a written record of the information (where possible in the child's own words), including the time, date and place of incident/s, persons present and what was said;
- Sign and date the written record and immediately report the matter to the Designated Safeguarding Lead (DSL)
- Take a photograph or complete a body map of any overt physical injuries
- If staff members are unsure they should always speak to their DSL and/or headteacher.
- Where there are concerns about the headteacher/CEO it must be referred to the CEO/Chair of Directors.

4. Initial action by the Designated Safeguarding Lead/Headteacher

When informed of a concern or allegation, the DSL should not initially investigate the matter or interview the member of staff, child concerned or potential witnesses. They should:

- Obtain written details of the concern / allegation, signed and dated by the person receiving (not the child / adult making the allegation);
- Record any information about times, dates and location of incident/s and names of any potential witnesses;
- Record discussions about the child and/or member of staff, any decisions made, and the reasons for those decisions

The LADO should be informed within one working day when allegations appear to meet the criteria listed in section one and prior to any further investigation taking place. Referrals should not be delayed to gather information. Contact details and a referral form can be found on Swindon schoolsonline at:

https://safeguardingpartnership.swindon.gov.uk/info/3/workers_and_volunteers/10/workers_and_volunteers/2

The purpose of an initial discussion is for the LADO and the case manager to consider the nature, content and context of the allegation and agree a course of action. It also alerts the LADO about cases that may also reach them via another route for example if the parent goes straight to the police or social care – allowing the LADO to have as full a picture as possible. To gain an overview the LADO may also want to know details of any previous complaints, any adult witnesses, any child witnesses, any noted injuries, any tensions between staff and parents and a clear idea of the time and location of when issues may have occurred.

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 DSL and the LADO, and agreement reached as to what information should be put in writing to the individual concerned and by whom. Although the LADO may feel the threshold for a continued investigation has not been met, the school may feel they still have sufficient concerns regarding the individual facing the allegation, in which case they must decide what course of action they want to take and this may include warnings of a various nature or possible disciplinary action.

The DSL should inform the accused person about the allegation as soon as possible after consulting the LADO. It is extremely important that the DSL provides them with as much information as possible at that time. However, where a strategy discussion is

needed, or police or children's social care services need to be involved, the case manager should not do share information about the allegation until those agencies have been consulted unless it has already been agreed with the LADO that certain information can be shared.

The LADO will advise the employer whether or not informing the parents of the child/ren involved will impede the disciplinary or investigation processes. Acting on this advice, if it is agreed that the information can be fully or partially shared, the employer should inform the parent's. In some circumstances, however, the parent/s may need to be told straight away (eg if a child is injured and requires medical treatment).

If the allegation is not false and there is cause to suspect that a child is suffering or is likely to suffer significant harm, the LADO will arrange for a strategy discussion to be convened in accordance with the *Working Together to Safeguard Children 2018*.

5. Considering whether suspension is appropriate

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. An individual should only be suspended if there is no reasonable alternative. Suspension should be considered only in a case where there is cause to suspect a child or other children at the school are at risk of harm, the case is so serious that it might be grounds for dismissal or it is necessary to allow any investigation to continue unimpeded.

Suspension should not be the default option but if used the reasons and justification should be recorded by the school and the individual notified of the reasons.

The decision to suspend is taken by the headteacher in consultation with the CEO and Head of HR and not the police or LADO although they may give advice in order to safeguard all parties.

Being suspended or asked to refrain from attending work can give rise to great anxiety for the individual subject to the allegations. They may fear that the act could be an indicator or presumed guilt and may be feeling particularly isolated and vulnerable. On this basis they should be encouraged to seek advice from their trade union and be signposted the relevant welfare support through the Trust eg. Care First, Occupational Health etc. The individual should be advised in writing how they are to be kept updated about the progress of the investigation, how support and counselling are to be offered and how links will be maintained with school to keep them updated on school matters.

Based on assessment risk the following alternatives should be considered by the headteacher before suspending a member of staff:

- Leave of absence
- Undertaking different duties which do not involve direct contact with the individual child/children
- Put in place additional supervision

- Carry out work from home

The Trust has a responsibility to safeguard confidentiality as far as possible. Sensitive information must only be disclosed on a need to know basis with other professionals involved in the investigative process. Consideration should be given on how best to manage any information in the public domain, bearing in mind that it is an offence for anyone to put sensitive information regarding an allegation against a teacher into the public domain prior to any charge or subsequent court appearance.

6 Strategy Meeting

The meeting will normally include the LADO or their representative, a Children's services representative, the Headteacher/CEO, HR and depending on the circumstances the police. Other relevant individuals may be invited depending on the circumstances. In a strategy discussion or the initial evaluation of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.

Where the police are involved, wherever possible the employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

Children's social care services should adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need or protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer without delay.

Where the initial consideration or strategy meeting decides the allegation does not involve a possible criminal offence or require a children's services investigation it should be dealt with by the school. In such cases if the nature of the allegation does not require formal disciplinary action, appropriate informal action may be taken in accordance with the Trust's Disciplinary procedure.

If the strategy meeting decides a Section 47 enquiry or police investigation is required any unilateral action by the school will need to be suspended, unless otherwise agreed, until their investigations are complete. The strategy meeting should also consider what support should be provided to the member of staff and others who may be affected and how they will be kept up to date with the progress of the investigation.

The Trust will take advice from the police and LADO to agree the following:

- Who needs to know and more importantly 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 an when it might arise

The following definitions should be used when determining the outcome of allegation investigations:

- **Substantiated:** there is sufficient evidence to prove the allegation
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **False:** there is sufficient evidence to disprove the allegation.
- **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- **Unfounded:** To reflect cases where there is no evidence or proper basis which supports the allegation being made.

7. Resignations and Settlement agreements

The fact that a person tenders his or her resignation or ceases to provide their services must not prevent an allegation being followed up in accordance with these procedures. By the same token settlement agreements, by which a person agrees to resign if the school agrees not to pursue disciplinary action, must not be used in these cases. A referral to the DBS must be made if the criteria met.

8. Record Keeping

Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person's confidential personnel file, and a copy provided to the person concerned.

The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS Disclosures reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least 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.

9. References

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

10. Action following a criminal investigation or a prosecution

The police or the Crown Prosecution Service (CPS) should inform the school and LADO straight away when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances the LADO should discuss with the head teacher, and chair of governors whether any further action, including disciplinary action, is appropriate and, if so, how to proceed.

11. Action on conclusion of a case

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 LADO and the school should discuss whether a referral to the Disclosure and Barring Service (DBS) for consideration of inclusion on the barred lists and /or (for teachers) to the Department of Education is needed.

There is also 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 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.

12. In respect of malicious or unsubstantiated allegations

If an allegation is determined to be unsubstantiated or malicious, the LADO should refer the matter to the children's social care services to determine whether the child concerned is in need of services, or may have been abused by someone else. If an allegation is shown to be deliberately invented or malicious, the school should consider whether any disciplinary action is appropriate against the pupil/colleague who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible, even if he or she was not a pupil/employee.