

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

ABOUT THIS GUIDANCE

This is statutory guidance from the Department for Education. This means recipients must have regard to it when carrying out duties relating to handling allegations of abuse against teachers and other staff.

REVIEW DATE

This guidance will be reviewed when the consultation has closed.

WHAT LEGISLATION DOES THIS GUIDANCE RELATE TO?

- 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).

WHO IS THE GUIDANCE FOR?

This guidance aimed at:

- Schools, local authorities, governing bodies in maintained and independent schools, Academies, short stay schools and the FE sector.

KEY POINTS

- If an allegation is made against a teacher the quick resolution of that allegation should be a clear priority to the benefit of all concerned. At any stage of consideration or investigation, all unnecessary delays should be eradicated.
- In response to an allegation staff suspension should not be the default option. An individual should only be suspended if there is no reasonable alternative. If suspension is deemed appropriate,

the reasons and justification should be recorded by the school and the individual notified of the reasons.

- Allegations that are found to have been malicious should be removed from personnel records and any that are not substantiated, are unfounded or malicious should not be referred to in employer references.
- 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).
- All schools and FE colleges should have procedures for dealing with allegations. The procedures should make it clear that all allegations should be reported **straight away**, normally to the head teacher, principal or proprietor if it is an independent school. The procedures should also identify the person, often the chair of governors, to whom reports should be made in the absence of the head teacher or principal, or in cases where the head teacher or principal themselves are the subject of the allegation or concern. Procedures should also include contact details for the local authority designated officer (LADO) responsible for providing advice and monitoring cases.

MAIN BODY OF THE DOCUMENT

Duties as an employer and employee

Employers have a duty of care to their employees. They should ensure they provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended.

This guidance is about managing cases of allegations that might indicate a person is unsuitable to continue to work with children in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) in a school or FE college that provides education for children under 18 years of age has:

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| <ul style="list-style-type: none">• 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 is unsuitable to work with children. |
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It is essential that any allegation of abuse made against a teacher or other member of staff or volunteer in a school or FE college is dealt with very quickly, in a fair and consistent way that provides effective protection for the child and at the same time supports the person who is the subject of the allegation.

The framework for managing cases of allegations of abuse against people who work with children is set out in *'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children'* (March 2010) which provides an overview of how allegations should be handled. It is relevant for the purposes of s.157 and s.175 of the Education Act 2002.

INITIAL CONSIDERATIONS

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.

Some rare allegations will be so serious as to require immediate intervention by the local authority's social care and/or police. The local authority designated officer (LADO) should be informed of all allegations that come to a school or FE college's attention and appear to meet the criteria so that he or she can consult police and local authority children's social care colleagues as appropriate.

In the first instance, the head teacher or principal, or chair of governors, chair of the management committee or proprietor of an independent school should immediately discuss the allegation with the LADO. The purpose of an initial discussion is for the LADO, and the head teacher or principal, to consider the nature, content and context of the allegation and agree a course of action. The LADO may ask the senior manager 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 manager and the LADO, and agreement reached as to what information should be put in writing to the individual concerned and by whom. The manager should then consider with the LADO what action should follow in respect of the individual and those who made the initial allegation.

The head teacher or principal should inform the accused person about the allegation as soon as possible after consulting the LADO. 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 local authority's social

care need to be involved, the head 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. Please see further information 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 paragraph 5.56 of *Working Together to Safeguard Children*. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take account of the fact that teachers and other school and FE college staff are entitled to use reasonable force to control or restrain pupils in certain circumstances, including dealing with disruptive behaviour.

Where it is clear that an investigation by the police or local authority children's social care is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the LADO should discuss the next steps with the head teacher or principal, or chair of governors, chair of the management committee or proprietor. In those circumstances the options open to the school or FE college depend on the nature and circumstances of the allegation and the evidence and information available, and will range from taking no further action to summary dismissal or a decision not to use the person's services in future. Suspension should not be the default position – an individual should only be suspended if there is no reasonable alternative.

In some such cases further enquiries will be needed to enable a decision about how to proceed. If so, the LADO should discuss with the head teacher or principal, and chair of governors, chair of the management committee or proprietor how and by whom the investigation will be undertaken. In straightforward cases that should normally be undertaken by a senior member of the school or FE college's staff. However, in other circumstances lack of appropriate resource within the school or college, or the nature or complexity of the allegation will require an independent investigator. Many local authorities already provide for an independent investigation of allegations, often as part of the personnel services that schools and FE colleges can buy in from the authority. It is important that local authorities ensure that schools and FE colleges have access to an affordable facility for independent investigation where that is appropriate.

SUPPORTING THOSE INVOLVED

Employers have a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations and disciplinary process. Support for the individual is key to fulfilling this duty. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the local authority social care or the police. The school or FE college 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. For staff in maintained schools, that may include support via the local authority occupational health or employee welfare arrangements. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and current work related issues. 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.

Parents or carers of a child or children involved should be told about the allegation as soon as possible if they do not already know of it. However, where a strategy discussion is required, or police or local authority children's social care need to be involved, the head should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents. They should also be kept informed about the progress of the case, and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process. The deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but the parents or carers of the child should be told the outcome.¹

In cases where a child may have suffered significant harm, or there may be a criminal prosecution, local authority social care, or the police as appropriate, should consider what support the child or children involved may need.

CONFIDENTIALITY

It is extremely important that when an allegation is made, the school or FE College makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. In accordance with the Association of Chief Police Officers (ACPO) guidance the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. (In exceptional cases where the police might depart from that rule, e.g. an appeal to trace a suspect, the reasons should be documented and partner agencies consulted beforehand.)

Schools and FE Colleges should take advice from the LADO, police and social care to agree the following:

- 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

¹ In deciding what information to disclose, careful consideration should be given to the provisions of the Data Protection Act 1998, the law of confidence and, where relevant, the Human Rights Act 1998.

- How to manage press interest if and when it should arise.

RESIGNATIONS AND 'COMPROMISE 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. It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process. Wherever possible the person should be given a full opportunity to answer the allegation and make representations about it, but the process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be regarded as substantiated on the basis of all the information available should continue even if that cannot be done or the person does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

By the same token so called 'compromise agreements', by which a person agrees to resign, if the school or FE college agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, **must not be used in these cases**. In any event, such an agreement will not prevent a thorough police investigation where that is appropriate. Nor can it override the statutory duty to make a referral to the Independent Safeguarding Authority (ISA) where circumstances require that.

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 CRB 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. 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.

REFERENCES

Cases in which an allegation was proven to be 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.

TIMESCALES

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations must be investigated as a priority so as to avoid any delay. Target timescales are shown below for different actions in the summary description of the process. The time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. It is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months.

For those cases where it is clear immediately that the allegation is unfounded or malicious then it is expected that they should be resolved within one week. Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the employer to deal with it, although if there are concerns about child protection, the employer should discuss with the LADO. In such cases, if the nature of the allegation does not require formal disciplinary action, the head teacher or principal should institute appropriate action within 3 working days. If a disciplinary hearing is required and can be held without further investigation, the hearing should be held within 15 working days.

OVERSIGHT AND MONITORING

The LADO has overall responsibility for oversight of the procedures for dealing with allegations; for resolving any inter-agency issues, and for liaison with the Local Safeguarding Children Board (LSCB) on the subject. The designated local authority officer(s) will provide advice and guidance to the school or FE college, in addition to liaising with the police and other agencies, and monitoring the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals depending on the complexity of the case.

Police forces should also identify officers who will be responsible for: liaising with the designated local authority officer(s), taking part in the strategy discussion, or initial evaluation, subsequently reviewing the progress of those cases in which there is a police investigation, and sharing information on completion of the investigation or any prosecution.

If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing

the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to: charge the individual; continue to investigate; or close the investigation. Wherever possible that review should take place **no later than 4 weeks** after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

SUSPENSION

The possible risk of harm to children posed by an accused person needs to be effectively evaluated and managed in respect of the child(ren) involved in the allegations. In some cases that will require the school or FE college to consider suspending the person until the case is resolved. Suspension must not be an automatic response when an allegation is reported. If the school or FE college is concerned about the welfare of other children in the community or the teacher's family, those concerns should be reported to the LADO or police but suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension should only be considered in a case where there is cause to suspect a child or other children at the school or FE college is or are at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically, or without careful thought being given to the particular circumstances of the case. Schools and FE colleges must consider carefully whether the circumstances of the case warrant a person being suspended from contact with children at the school or FE college until the allegation is resolved, and may wish to seek advice from their personnel adviser.

Schools and FE colleges should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements. For example, redeployment so that the individual does not have direct contact with the child concerned, or providing an assistant to be present when the individual has contact with children. This allows time for an informed decision regarding the suspension and possibly reducing the initial impact of the allegation. This will however, depend upon the nature of the allegation. Schools and FE colleges should consider the potential permanent professional reputational damage to teachers that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended.

Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within **one working day**, giving the reasons for the suspension. The person should be informed at that point who their named contact is within the organisation and provided with their contact details.

Local authority children's social care or the police cannot require a school or FE college to suspend a member of staff or a volunteer, although schools and FE colleges should give appropriate weight to their advice. The power to

suspend is vested in the proprietor of the school, or the governing body of the school or FE college who are the employers of staff at the school or FE college. However, where a strategy discussion or initial evaluation concludes that there should be enquiries by the local authority social care and/or an investigation by the police, the LADO should canvass police and the local authority children's social care for views about whether the accused member of staff needs to be suspended from contact with children to inform the school or FE college consideration of suspension.

INFORMATION SHARING

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.

Wherever possible the police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the school or FE college for disciplinary purposes. 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.

The local authority's social care should adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need of 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 school or FE college without delay.

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 prosecute after the person has been charged. In those circumstances the LADO should discuss with the head teacher, principal and chair of governors or proprietor whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or the local authority social care should inform that decision. The options will depend on the circumstances of the case and the consideration will need to take account of the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

ACTION ON CONCLUSION OF A CASE

If the allegation is substantiated and the person is dismissed or the school or FE college ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the LADO should discuss with the school or FE college and its personnel adviser whether a referral to the Independent Safeguarding Authority (ISA) for consideration of inclusion on

the barred lists or by the General Teaching Council (GTC² is required. There is a legal requirement for employers to make a referral to the ISA 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 ISA 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 ISA 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, FE colleges and other bodies all have a statutory duty to make reports, and to provide relevant information to the ISA. 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.

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 or FE college 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 or FE college 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 or FE college.

LEARNING LESSONS

At the conclusion of a case in which an allegation is substantiated the LADO should review the circumstances of the case with the head teacher or principal, or the chair of governors, chair of the management committee or proprietor 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.

ACTION IN RESPECT OF UNFOUNDED OR MALICIOUS ALLEGATIONS

If an allegation is determined to be unfounded or malicious, the LADO should refer the matter to local authority children's social care to determine whether the child concerned is in need of services, or may have been abused by someone else. In the event that an allegation is shown to have been deliberately invented or malicious, the head teacher, principal or proprietor should consider whether any disciplinary action is appropriate against the pupil who made it, or the police should be asked to consider whether any

² Subject to the passage of the Education Bill 2011, it is planned that the GTCE will be abolished at the end of March 2012, and from this point onwards cases of serious misconduct will be considered by the new Teaching Agency, acting on behalf of the Secretary of State.

action might be appropriate against the person responsible, including if he or she was not a pupil. In September 2010 the Crown Prosecution Service published guidance for the police on harassment under the Protection from Harassment Act 1997.

FURTHER INFORMATION

Crown Prosecution Service published guidance for the police on harassment under the Protection from Harassment Act 1997. This can be found at http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/index.html

Guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention.

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/employment_practices_code.pdf

http://www.ico.gov.uk/for_organisations/data_protection/the_guide.aspx