

## PROCEDURES AND GUIDANCE

### **Allegations of abuse made against adults who work or volunteer with children**

Date of original document	August 2016
Date document reviewed	October 2016
Date for next review	October 2017



## INTRODUCTION

### 1. Duties as an employer and an employee

This guidance is about managing cases of allegations that might indicate a person in local authority or private / independent employment or as part of a voluntary organisation would pose a risk of harm if they continue to work in regular or close contact 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 an adult member of staff, including volunteers, foster carers and prospective adopters, 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 to children (including children both in and outside the workplace, and concern about the care of their own children).

The above behaviours should be considered within the context of the four categories of abuse physical, sexual, emotional and neglect, and also include possible involvement in related behaviours such as Female Genital Mutilation and Radicalisation.

This guidance relates to members of staff who are currently working in any setting regardless of whether the setting is where the alleged abuse took place. Allegations against a person who is no longer working with children should be referred to the police, as should historical allegations of abuse.

**As well as the responsibility for the safety of children, employers also 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. It is essential that any allegation of abuse made against a member of staff or volunteer 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.**

### 2. Initial considerations

In the first instance, the designated manager (this may be a Head Teacher, Team Manager, Children's Home Manager or any other designated person in a management position) should immediately discuss the allegation with the Local Authority Designated Officer (LADO). The purpose of an initial discussion is for the LADO and the manager to consider the nature, content and context of the allegation and agree a course of action. The LADO may ask the manager to provide or obtain relevant additional information, such as previous history, whether the child or their family have made similar allegations previously and the individual's current contact with children.

However it is important to ensure that all allegations are taken seriously and that previous behaviour of either the child or the adult is noted but does not cloud the decision making in respect of specific allegations.

There may be situations when the manager will want to involve the police and/or children's social care immediately, for example if the person is deemed to be an immediate risk to children or there is evidence of a possible criminal offence. Where there is no immediate evidence, the manager should discuss the allegation with the LADO in order to help determine whether police involvement is necessary.

If allegations are initially raised with the police or children's social care the LADO should be notified immediately and an initial strategy discussion should take place involving police, social care decision makers and LADO.

The 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

on 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, both in respect of the individual and those who made the initial allegation.

The manager/employer should inform the accused person about the allegation as soon as possible after consulting the LADO. It is extremely important that the manager provides the employee 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 manager should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused person. Employers must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children at the setting or whether alternative arrangements can be put in place until the allegation or concern is resolved. All options to avoid suspension should be considered prior to taking that step (see further information on suspension which follows).

If 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 the statutory guidance Working Together to Safeguard Children 2015. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that teachers (and other school and college staff) and staff working in residential homes are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.

Where it is clear that an investigation by the police or children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the LADO and designated manager should discuss next steps. In those circumstances, the options open to the employer depend on the nature and circumstances of the allegation and the evidence and information available. This will range from taking no further action to dismissal or a decision not to use the person's services in future. Suspension should not be the default position: an individual should be suspended only if there is no reasonable alternative.

In some cases, further enquiries will be needed to enable a decision about how to proceed. If so, the LADO and employer should discuss how and by whom the investigation will be undertaken. In straightforward cases, the investigation should normally be undertaken by a senior member of the employing organisation. However, in other circumstances, such as lack of appropriate resource within the place of employment, or the nature or complexity of the allegation, the investigation will require an independent investigator.

### **3. Supporting those involved**

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

Employers have a duty of care to their employees and should act to manage and minimise the stress inherent in the allegations process. Support for the individual is vital 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 children's social care services or the police. The individual should be advised to contact their trade union representative, if they have one, or a colleague for support. They should also be given access to welfare counselling or medical advice where this is provided by the employer.

The employer 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. Where available this may include support via the occupational health or other 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. In such cases a single point of contact at the work place or service will be identified for the employee to seek information and guidance. Social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence. However there should be no contact with children from the employee's workplace or their parents/carers.

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 children's social care services and LADO need to be involved, the employer should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents or carers. Parents or carers 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 reassured that the matter has been dealt with appropriately.

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

#### **4. Confidentiality**

It is extremely important that when an allegation is made, the employer makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. (The Education Act 2002 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).

Parents and carers should be made aware of the requirement to maintain confidentiality about any allegations made against teachers whilst investigations are ongoing (as set out in section 141F of the Education Act 2002). If parents or carers wish to apply to the court to have reporting restrictions removed, they should be told to seek legal advice.

The employer should take advice from the LADO, police and children's social care services 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
- how to manage press interest if and when it should arise.

#### **5. Managing the situation and exit arrangements**

##### **Resignations and 'settlement agreements'**

If the accused person resigns, or ceases to provide their services, this should not prevent an allegation being followed up in accordance with this guidance. **A referral to the DBS must be made, if the criteria are met.** If the accused person resigns or their services cease to be used and the criteria are met it will not be appropriate to reach a settlement/compromise agreement. A settlement/compromise agreement which prevents the employer from making a DBS referral when the criteria are met, would likely result in a criminal offence being committed as the employer would not be complying with its legal duty to make the referral.

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 accused person refuses to cooperate with the process. Wherever possible they 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 substantiated on the basis of all the information available, should continue even if that cannot be done or the accused 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.

'Settlement agreements' (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, should not be used in cases of refusal to cooperate

or resignation before the person's notice period expires. Such an agreement will not prevent a thorough police investigation where that is appropriate.

## **6. 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 the confidential file of the accused person, 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 checks 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 accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

## **7. References**

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

## **8. Timescales**

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. 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 the following 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 unsubstantiated or malicious, 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 them with the LADO. In such cases, if the nature of the allegation does not require formal disciplinary action, the employer should institute appropriate action within three working days. If a disciplinary hearing is required the normal HR policies will be applied.

## **9. Oversight and monitoring**

The LADO has overall responsibility for oversight of the procedures for dealing with allegations about people working with children; for resolving any inter-agency issues; and for liaison with the East Riding Safeguarding Children Board (ERSCB) on the subject. The LADO will provide advice and guidance to the employer, 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 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 four weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

## **10. Suspension**

The possible risk of harm to children posed by an accused person should be evaluated and managed in respect of the child(ren) involved in the allegations. In some rare cases that will require the employer to consider suspending the accused until the case is resolved. 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. If the employer is concerned about the welfare of other children in the community or the staff member'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 be considered only in a case where there is cause to suspect a child or other children at the setting is/are at risk of harm or the case is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically. The employer must consider carefully whether the circumstances warrant suspension from contact with children at the setting or until the allegation is resolved, and may wish to seek advice from their Human Resources / personnel adviser and the LADO. (In cases where the school or college is made aware that the Secretary of State has made an interim prohibition order in respect of an individual at the school or college it will be necessary to immediately suspend that person from teaching pending the findings of the NCTL's investigation).

The employer should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can be resolved quickly and without the need for suspension. If the LADO, police and children's social care services have no objections to the member of staff continuing to work during the investigation, employers should be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternatives should be considered before suspending a member of staff:

- redeployment within the setting so that the individual does not have direct contact with the child or children concerned;
- providing an assistant to be present when the individual has contact with children;
- redeploying to alternative work in the setting so the individual does not have unsupervised access to children;
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or work for the local authority or academy trust.

These alternatives allow time for an informed decision regarding the suspension and possibly reduce the initial impact of the allegation. This will, however, depend upon the nature of the allegation. The employer should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended.

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

Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within one working day, giving as much detail as appropriate for the reasons for the suspension. It is not acceptable for an employer to leave a person who has been suspended without any support. The person should be informed at the point of their suspension, who their named contact is within the organisation and provided with their contact details.

Children's social care services or the police cannot require the employer to suspend a member of staff or a volunteer, although they should give appropriate weight to their advice. The power to suspend is vested in the employer, (or governing bodies of any school or college who are the

employers of staff at a school or college). However, where a strategy discussion or initial evaluation concludes that there should be enquiries by the children's social care services and/or an investigation by the police, the LADO should canvass police and children's social care services for views about whether the accused member of staff needs to be suspended from contact with children in order to inform the employer consideration of suspension. Police involvement does not make it mandatory to suspend a member of staff; this decision should be taken on a case-by-case basis having undertaken a risk assessment.

## **11. 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.

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 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 employer without delay.

## **12. Specific actions**

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. 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.

### **Following a criminal investigation or a prosecution**

The police should inform the employer and LADO immediately 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 employer whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or children's social care services should inform that decision. The options will depend on the circumstances of the case and the consideration will need to take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

### **On conclusion of a case**

If the allegation is substantiated and the person is dismissed or the employer 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 employer, and their personnel adviser, whether a referral to the DBS for consideration of inclusion on the barred lists is required. The LADO should advise the setting or service manager if s/he feels that a referral is appropriate and ensure that confirmation is obtained from the responsible officer that this has been done.

**There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child.**

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the employer should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a 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 manager responsible 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 attending the setting.

### **13. 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, it should be considered whether any disciplinary action is appropriate against the person who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible.

### **14. 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 employer to determine whether there are any improvements to be made to any 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 LADO and employer should consider how future investigations of a similar nature could be carried out without suspending the individual.