



Approved by FBG on 26.11.18

## **DEALING WITH ALLEGATIONS OF ABUSE AGAINST TEACHERS AND OTHER STAFF**

### **The Aims of this Guidance**

To ensure that any allegation made against a teacher or other member of staff or volunteer in an education setting (including the independent sector) is dealt with fairly, quickly, and consistently, in a way that provides effective protection for children, and at the same time supports the person who is the subject of the allegation.

This guidance outlines the initial response to an allegation of abuse against a teacher or another member of staff. For more detailed guidance, particularly action following the outcome of an initial investigation reference must be made to the DfE Guidance.

### **Legislation**

This guidance is based on:-

- **Keeping Children Safe in Education – September 2016: Part 4: Allegations of abuse against teachers and other staff**
- 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 At 2004 (other agencies).

### **Procedures**

The Person responsible for dealing with allegation of abuse against teachers and staff is the **Headteacher**. If the allegation is against the Headteacher or Child Protection Officer, the person responsible is the **Chair of Governors**.

Holmwood School has a duty of care to our employees. We will ensure that we provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended.

### **Scope**

This guidance is about managing cases of allegations that might indicate a person 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 a teacher or member of staff (including volunteers) in a school or FE college that provides education for children under 18 years of age:-

- 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 indicated he or she would pose a risk of harm if they work regularly or closely with children.

These behaviours should be considered within the context of the four categories of abuse:-

- Physical, sexual, emotional abuse and neglect.

It is essential that any allegation of abuse made against a teacher or other member of staff or volunteer at Holmwood School 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.

#### **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 Headteacher.

#### **Initial Action by the Headteacher**

The procedures for dealing with allegations need to be applied with common sense and judgment. When informed of a concern or allegation, the Headteacher 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 Local Authority Designated Officer (LADO) should be informed within one working day when allegations appear to meet the criteria listed. Referrals should not be delayed in order to gather information.

The purpose of an initial discussion is for the LADO and the Headteacher 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, and 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 manager and the LADO, 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 LADO what action, including possible disciplinary action, should follow in respect of the individual and those who made the initial allegation.

The Headteacher should inform the accused person about the allegation as soon as possible after consulting the LADO. It is extremely important that the Headteacher 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 Headteacher should not do that until those agencies have been consulted.

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 immediately refer to children's social care and ask for a strategy discussion to be convened.

## **Suspension**

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 or the case so serious that it might be grounds for dismissal. 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 strategy meeting may advise a school to suspend but the actual decision will rest with the Headteacher or Chair of Governors.

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

- redeployment within the school 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;
- redeployment to alternative work in the school so the individual 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 school in a different location, for example to an alternative school or for the local authority.

## **Strategy Meeting**

The meeting will normally include the LADO or their representative, a child protection adviser from Children's services, a senior manager from the school, school's HR and depending on the circumstances the police and legal services. Other relevant individuals may be invited depending on the circumstances. 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 staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.

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

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. Protocols for sharing information a police or children's services investigation need to be agreed especially as a common outcome will be to refer the issue back to the school to consider as a disciplinary issue.

Where further investigation is required to inform consideration of disciplinary action the employer should discuss who will undertake that with the LADO. In some circumstances it may be appropriate for the disciplinary investigation to be conducted by a person who is independent of the employer or the person's line manager to ensure objectivity. In any case the investigating officer should aim to provide a report to the employer within 10 working days.

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.

### **Supporting those Involved**

The Headteacher should inform the accused person about the allegation as soon as possible after consulting the LADO. The Headteacher 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 services need to be involved, the Headteacher should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the person.

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 services or the police. The individual should be advised to contact their trade union representative, if they have one, or a colleague for support. When appropriate they should also be given access to welfare counselling or medical advice where this is provided by the employer.

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. 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 services need to be involved, the head should consult those agencies and agree 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 in confidence. Parents and carers should also be made aware of the prohibition on reporting or publishing allegations about teachers in section 141F of the Education Act 2002.

## **Confidentiality**

It is extremely important that when an allegation is made, the school makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered.

Holmwood School should take advice from the LADO, police and local authority 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.

From 1st October 2012 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. Basically the reporting restrictions apply until the point that the accused person is charged with an offence.

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

## **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 are met (Action on Conclusion of a Case).**

## **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.

## **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.

## **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 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.

## **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 Headteacher, and chair of governors whether any further action, including disciplinary action, is appropriate and, if so, how to proceed.

## **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 should discuss with the school 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.

**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.

## **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 Headteacher, principal or proprietor should consider whether any disciplinary action is appropriate against the pupil 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.