



# **Allegations of abuse made against staff and volunteers working with children**

Person responsible for policy: HR Director

Revised: October 2022

Review Date: October 2023

**This policy is based on Keeping Children Safe In Education 2022**

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## **Swindon Schools**

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## Summary of Key Issues and Actions to be Taken

1. Suspension should never be an automatic response. Appropriate criteria should be applied in all cases. Suspension Risk Assessment form to be completed.
2. Ensure appropriate safeguarding measures are in place during the referral/investigation process.
3. Do not seek to investigate the allegation yourself or interview the child.
4. You must consult with a member of the Designated Officers team for the Local Authority as soon as possible after receiving the allegation. No actions should be taken until the team has been contacted **you must then contact your RLT HR Business Partner without delay** who will assist in managing the allegation process and it will be determined if Section One or Section Two of this policy applies
5. Ideally obtain details of the “allegation” in writing, ideally signed and dated by the person receiving the allegation, and counter-signed and dated by the lead for child protection. Record all actions taken with time/date and who took the action.
6. An investigating officer will be appointed, in consultation with the Police, Head Teacher and Local Authority if the joint decision is made that a formal investigation is the appropriate course of action.

## What’s the difference between an allegation and a complaint?

### Allegations

An allegation, in the context of the statutory obligations or organisations relates to any individual who works or volunteers in any capacity with children and where there is a concern that this person has or may have;

- Behaved in a way that has harmed a child, or may have hurt a child
- Possibly committed a criminal offence against or related to a child
- Behaved towards a child or children in a way that indicates he or she would pose a risk of harm to children
- Behaved or may have behaved in a way that indicates they may not be suitable to work with children

In all cases where the concern about an individual falls into one of the categories above this will be considered to be an allegation, if it relates to a child, (i.e. an individual who has not yet attained the age of 18.)

In all such cases the allegation must be reported to the Designated Officer (LADO) as soon as possible in the geographical location appropriate to your school e.g. Swindon or Oxford LADO, but must be within 24 hours. ***Under no circumstances should the school carry out any investigation or take any action until the matter has been referred to the LADO and RLT HR are involved in the process.***

## **Complaints**

Complaints are generally expressions of dissatisfaction or concern that may relate to the delivery of a service by a team or individual. A complaint may also be an expression of dissatisfaction about procedures or policy or the way procedures and policies are implemented by any team, team member or the school. All schools should have their own complaints policy and all such complaints should be addressed following that policy. Where there is no indication that the complaint relates to harm or potential harm to a child there is no need to refer to the Designated Officer.

## **Allegations of abuse made against staff, including supply teachers and volunteers working with children**

This part of the guidance has two sections covering the two levels of allegation/concern:

1. Allegations that may meet the harms threshold.
2. Allegation/concerns that do not meet the harms threshold – referred to for the purposes of this guidance as ‘low level concerns’.

These procedures should be consistent with local safeguarding procedures and practice guidance.

### **Section one: Allegations that may meet the harms threshold**

This part of the guidance is about managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in their present position, or in any capacity with children in a school.

This guidance should be followed where it is alleged that anyone working in the school that provides education for children under 18 years of age, including supply teachers, volunteers and contractors has:

- **behaved in a way that has harmed a child, or may have harmed a child and/or;**
- **possibly committed a criminal offence against or related to a child and/or;**
- **behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children; and/or**
- **behaved or may have behaved in a way that indicates they may not be suitable to work with children.**

The last bullet point above includes behaviour that may have happened outside of school, that might make an individual unsuitable to work with children, this is known as transferable risk.

Where appropriate an assessment of transferable risk to children with whom the person works should be undertaken. If in doubt seek advice from the local authority designated officer (LADO).

### **The initial response to an allegation**

There are two aspects to consider when an allegation is made:

1. **Looking after the welfare of the child** - the designated safeguarding lead is responsible for ensuring that the child is not at risk and referring cases of suspected abuse to the local authority
2. **Investigating and supporting the person subject to the allegation** - the case manager should discuss with the LADO, the nature, content and context of the allegation, and agree a course of action.

When dealing with allegations, schools should:

- apply common sense and judgement;
- deal with allegations quickly, fairly and consistently; and
- provide effective protection for the child and support the person subject to the allegation.

Before contacting the LADO, schools should conduct basic enquiries in line with local procedures to establish the facts to help them determine whether there is any foundation to the allegation, being careful not to jeopardise any future police investigation.

For example:

- was the individual in the school at the time of the allegations?
- did the individual, or could they have, come into contact with the child?
- are there any witnesses? and,
- was there any CCTV footage?

When to inform the individual of the allegation should be considered carefully on a case by case basis, with guidance as required from the LADO

Where it is clear that an investigation by the police or children's social care is unnecessary, or the strategy discussion or initial assessment decides that is the case, the LADO should discuss the next steps with the case manager.

### **No further action**

Where the initial discussion leads to no further action, the case manager and the LADO should:

- record the decision and justification for it; and,
- agree on what information should be put in writing to the individual concerned and by whom.

### **Further enquiries**

Where further enquiries are required to enable a decision about how to proceed, the LADO and case manager 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 school's staff.

### **Supply teachers**

In some circumstances schools will have to consider an allegation against an individual not directly employed by them, where its disciplinary procedures do not fully apply, for example, supply teachers provided by an employment agency or business (referred to in this section as 'the agency').

Whilst schools are not the employer of supply teachers, they should ensure allegations are dealt with properly. In no circumstances should a school decide to cease to use a supply teacher due to safeguarding concerns, without finding out the facts and liaising with the local authority designated officer (LADO) to determine a suitable outcome.

Agencies should be fully involved and co-operate in any enquiries from the LADO, police and/or children's social services. The school will usually take the lead because agencies do not have direct access to children or other school staff, so they will not be able to collect the facts when an allegation is made, nor do they have all the relevant information required by the LADO as part of the referral process. Supply teachers, whilst not employed by the school, are under the supervision, direction and control of the governing body or proprietor when working in the school. They should be advised to contact their trade union representative if they have one, or a colleague for support. The allegations management meeting which is often arranged by the LADO should address issues such as information sharing, to ensure that any previous concerns or allegations known to the agency are taken into account by the school during the investigation.

When using an agency, schools should inform the agency of its process for managing allegations. This should include inviting the agency's human resource manager or equivalent to meetings and keeping them up to date with information about its policies.

## Governors

If an allegation is made against a governor, schools should follow their own local procedures. Where an allegation is substantiated, they should follow the procedures to consider removing them from office.

## Suspension

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. The case manager **must** consider carefully whether the circumstances warrant suspension from contact with children at the school or until the allegation is resolved. It should be considered only in cases where there is cause to suspect a child or other children at the school is/are at risk of harm, or the case is so serious that it might be grounds for dismissal. If in doubt, the case manager should seek views from RLT HR and the LADO, as well as the police and children's social care where they have been involved.

In many cases, an inquiry can be resolved quickly and without the need for suspension. The employer will decide on whether the individual should continue to work at the school, based on consultation with the LADO who will provide relevant information they have received from the police or children's social care on whether they have any objections to the member of staff continuing to work during the investigation of the case. The case manager should be as inventive as possible to avoid suspension.

Based on advice from RLT HR, the following alternatives should be considered by the case manager 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;
- redeploying 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, but this decision should only be made if it is in the best interest of the child or children concerned and takes accounts of their views. It should be made making it clear that this is not a punishment and parents have been consulted; or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or where available, the RLT central team..

These alternatives allow time for an informed decision regarding the suspension; this will, however, depend upon the nature of the allegation. The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unfounded, unsubstantiated, malicious, or false.

If immediate suspension is considered necessary, the case manager should record the rationale and justification for such a course of action. 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 given 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.

## **Supporting those involved**

### **Duty of care**

The welfare of a child is paramount (how children should be protected and supported is set out throughout this guidance) and this will be the prime concern in terms of investigating an allegation against a person in a position of trust. However, when an allegation or safeguarding concern is being investigated it is likely to be a very stressful experience for the adult subject of the investigation, and potentially for their family members. It is important that an employer offers appropriate welfare support at such a

time and recognises the sensitivity of the situation. Information is confidential and should not ordinarily be shared with other staff or with children or parents who are not directly involved in the investigation.

- advise the individual to contact their trade union representative, or a colleague for support;
- appoint a named representative to keep the person informed about progress of the case;
- provide access to the RLT Employee Assistance Programme or medical advice where appropriate. and
- not prevent social contact with work colleagues and friends, when staff are suspended, unless there is evidence to suggest this may prejudice the gathering of evidence.

Parents or carers of the child or children involved should be:

- formally informed about the allegation as soon as possible. The case manager should consult the LADO and where involved children's social care and/or the police on what information can be disclosed;
- kept informed about the progress of the case, only in relation to their child no information can be shared regarding the staff member; and
- made aware of the requirement to maintain confidentiality and unwanted publicity about any allegations made against teachers in schools whilst investigations are in progress.

### **Confidentiality and Information sharing**

The school **must** make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. The Education Act 2011 amended the Education Act 2002, to introduce reporting restrictions. These provisions made it an offence (except in the limited circumstance expressly permitted by the legislation), for any person to publish any material that may lead to the identification of a teacher in a school who has been accused by, or on behalf of, a child from the same school (where that identification would identify the teacher as the subject of the allegation).

The reporting restrictions apply until:

- the point that the accused person is charged with a relevant offence; or
- the Secretary of State publishes information about an investigation or decision in a disciplinary case arising from the allegation.

The reporting restrictions are disapplied if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a court lifts the reporting restrictions in response to a request to do so.

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## Allegation outcomes

The definitions that should be used when schools determine the outcome of an allegation during a formal hearing process are set out below:

- **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 or cause harm to the person subject of the allegation;
- **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; or,
- **Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made.

Ultimately the options open to the school depend on the nature and circumstances of the allegations 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.

If the allegation is substantiated and:

- the person is dismissed; resigns, or otherwise ceases to provide his or her services; or
- the employer ceases to use the person's services.

The employer has a legal duty to make a referral to the DBS for consideration of whether inclusion on the barred lists is required.

In the case of a member of teaching staff at a school or sixth form the case manager **must** consider whether to refer the matter to the TRA to consider prohibiting the individual from teaching.

There is a legal requirement for employers to make a referral to the DBS where they consider 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

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

The police should inform the LADO and the employer immediately when:

- a criminal investigation and any subsequent trial is complete,
- it is decided to close an investigation without charge, or
- it is decided not to continue to prosecute after the person has been charged.

In those circumstances, during the joint assessment meeting the LADO should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed.

### **Unsubstantiated, unfounded, false or malicious allegations**

If a report is determined to be unsubstantiated, unfounded, false or malicious, the designated safeguarding lead should consider whether the child and/or the person who has made the allegation is in need of help.

### **Returning to work**

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Guidance and advice are usually provided via HR or the LADO. Most people will benefit from some help and support to return to work after a stressful experience.

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

### **Resignations and ‘settlement agreements’**

‘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, where there are allegations that indicate the person is a risk or poses a risk of harm to children or deemed not suitable to work with children. Such an agreement will not prevent a thorough police and/or school investigation where that is appropriate.

Schools should not cease their investigations if the person leaves, resigns or ceases to provide their services. 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.

## 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 personnel file of the accused, 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.***

## References

34. 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.

## 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. Target timescales are shown below: 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 percent of cases should be resolved within one month, 90 percent 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 designated officer(s). 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 and can be held without further investigation, the hearing should be held within 15 working days.

### **Oversight and monitoring**

The designated officer(s) 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 officer(s) will provide advice and guidance to the case manager, 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.

## Section Two: Concerns that do not meet the harm threshold

### Low level concerns

As part of their whole school approach to safeguarding, schools should ensure that they promote an open and transparent culture in which all concerns about all adults working in or on behalf of the school (including supply teachers, volunteers and contractors) are dealt with promptly and appropriately.

Creating a culture in which **all** concerns about adults (including allegations that do not meet the harms threshold are shared responsibly and with the right person, recorded and dealt with appropriately, is critical.

### What is a low level concern?

The term 'low-level' concern does not mean that it is insignificant, it means that the behaviour towards a child does not meet the threshold.

A low-level concern is any concern – no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' - that an adult working in or on behalf of the school may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work, and
- does not meet the allegations threshold or is otherwise not considered serious enough to consider a referral to the LADO.

Examples of such behaviour could include, but are not limited to:

- being over-friendly with children;
- having favourites;
- taking photographs of children on their mobile phone;
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door; or,
- using inappropriate sexualised, intimidating or offensive language.

Such behaviour can exist on a wide spectrum, from the inadvertent or thoughtless, or behaviour that may look to be inappropriate, but might not be in specific circumstances, through to that which is ultimately intended to enable abuse.

It is crucial that any such concerns, including those which do not meet the allegation/harm threshold are shared responsibly and with the right person, and recorded and dealt with appropriately. Ensuring they are dealt with effectively should also protect

those working in or on behalf of schools from potential false allegations or misunderstandings

### **Sharing low-level concerns**

Low-level concerns about a member of staff should be reported to the headteacher.

Where there are concerns/allegations about the headteacher, this should be referred to the Chair of Governors, or a senior member of the RLT Central team. Schools should ensure they create an environment where staff are encouraged and feel confident to self-refer, where, for example, they have found themselves in a situation which could be misinterpreted, might appear compromising to others, and/or on reflection they believe they have behaved in such a way that they consider falls below the expected professional standards.

Where a low-level concern relates to a person employed by a supply agency or a contractor to work in a school, that concern should be shared with the designated safeguarding lead and employer notified about the concern.

### **Recording low-level concerns**

All low-level concerns should be recorded in writing by the designated safeguarding lead (or deputy). The record should include details of the concern, the context in which the concern arose, and action taken. The name of the individual sharing their concerns should also be noted, if the individual wishes to remain anonymous then that should be respected as far as reasonably possible.

Records should be reviewed so that potential patterns of concerning, problematic or inappropriate behaviour can be identified. Where a pattern of such behaviour is identified, the school should decide on a course of action, either through its disciplinary procedures or where a pattern of behaviour moves from a concern to meeting the harms threshold, in which case it should be referred to the LADO.

### **References**

Low level concerns should not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance or a substantiated allegation

### **Responding to low-level concerns**

Concerns about safeguarding should be reported to the designated safeguarding lead or their deputy. If the concern has been raised via a third party, the designated safeguarding lead should collect as much evidence as possible by speaking:

- directly to the person who raised the concern, unless it has been raised anonymously;
- to the individual involved and any witnesses.

The information collected will help them to categorise the type of behaviour and determine what further action may need to be taken. All of this needs to be recorded along with the rationale for their decisions and action taken.

The purpose of reporting and recording low level concerns is to create and embed a culture of openness, trust and transparency in which the clear values and expected behaviour which are set out in the RLT Code of Conduct are constantly lived, monitored and reinforced by all staff. In order to support this, where low level concerns are reported, support will be offered to address unprofessional behaviour and help the individual to correct such behaviour at an early stage.

This approach will also help to identify concerning, problematic or inappropriate behaviour – including any patterns – that may need to be consulted upon with (on a no-names basis if appropriate), or referred to, the LADO;

For further information on how to deal with a Low Level Concern please contact RLT Central HR Team