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# Allegations of Abuse Against Staff Policy

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Prepared by:	Adopted by Board of Trustees
HR Manager /Trust Safeguarding Lead Agreed with Union representatives	<b>Autumn 2023</b>

October 2023 – this policy has been updated in line with KCSiE 2023 including the substantive additional heading on allegation or concerns relating to organisations or individuals using school premises.

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### 1.0 Purpose

The Aspire Educational Trust takes its responsibility of care for pupils seriously. We will thoroughly investigate allegations of abuse against staff, including supply teachers, volunteers and contractors – this will be done in a fair way that does not prejudice either the pupil or the member of staff. Any investigation of an allegation of abuse will be made in line with this policy and we will provide both the accuser and accused with the support they require during the investigation.

We do this by living our values:



Applying these values to everything we do means always acting with integrity, in the interests of others, being honest, open and transparent and putting the safety of our children first.

The guiding principle for dealing with allegations against staff, including supply teachers, volunteers and contractors is that;

‘It is essential that any allegation of abuse made against a teacher, other member of staff, volunteer or contractor in a 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.'

The Aspire Educational Trust ("the Trust") is required to follow the Department for Education's statutory guidance for schools on Keeping Children Safe in Education (2023). Part four, Section 1 of the guidance deals with managing cases of allegations that might indicate a person would pose a risk of harm if they continue working in regular or close contact with children. This policy sets out the approach that will be taken within the Trust to deal with allegations of abuse made against staff.

The stipulations within this policy apply to all staff, other visiting support staff, officers, workers, volunteers and contractors currently working in school, irrelevant of whether the school is the location of the abuse. Allegations against a teacher who is no longer teaching will be referred to the police, along with any historical allegations.

## **2.0 Introduction**

The DfE guidance is comprehensive and statutory, and the Trust expects that its academies will follow this guidance in any cases that arise, to ensure that the duty of care to both its employees and to children are met.

The guidance should be referred to immediately in any cases where a person 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
- Behaved towards a child or children in a way that indicated he or she may 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.

If an allegation is made against a member of staff, the quick resolution of that allegation should be a clear priority to the benefit of all concerned.

Allegations will be investigated in a fair and consistent way that provides effective protection for the child and, at the same time, supports the staff member (including supply staff), volunteer or contractor who is the subject of the allegations.

A full copy of the statutory guidance is included at the end of this policy.

## **3.0 Related policies**

This policy is linked to a number of the Trusts other policies and they should be referenced to when appropriate, including:

- Child Protection and safeguarding Policy
- Safer Recruitment
- Disciplinary (staff)
- Positive Handling/ reasonable force
- Behaviour
- Whistleblowing
- Staff Codes of Conduct
- Reporting low level safeguarding concerns policy
- Any other relevant guidance documents for staff and volunteers.

#### **4.0 Responsibilities**

Academies:

- must follow this guidance when dealing with allegations within their academy to ensure a consistent approach across the Trust.
- all allegations should be reported immediately to the appropriate Manager/Principal. Advice should be immediately taken from HR who will notify the Local Authority Designated Officer (LADO).
- if the allegation is against the Principal or a Senior Leader of the Trust, the Chair of the Board of Trustees or HR in their absence, should be informed. He/she will take advice from HR and inform the LADO.
- if the allegation is against the CEO, the Chair of The Board of Trustees should be informed. He/she will take advice from HR and inform the LADO.
- must follow the DfE statutory guidance (Annex A) in all cases where allegations of abuse are made against teachers (including supply teachers, volunteers and contractors) visiting support staff, officers and volunteers.
- must follow the DfE statutory guidance (Annex A) in all cases where the school receives an allegation relating to an incident that happened when an individual or organisation was using their school premises for the purposes of running activities for children.
- must alert the CEO or the Assistant CEO and the HR Manager to all allegations that are made under this guidance
- must ensure that all allegations are dealt with quickly, in a fair and consistent way, and making every effort to maintain confidentiality
- work in close liaison with their LADO, and with the police and children's social care services if appropriate

Before contacting the LADO, the Principal (or other appropriate person as above) should obtain:

- the name, date of birth, and contact details of the child, the parents / carers and the person who is the subject of the allegation
- details of any special or additional needs the child may have
- details of the allegation made and by whom
- details of any potential witnesses
- any relevant incident reports already available

All involved in the matter must be made aware that strict rules of confidentiality must apply. In the case of allegations against teachers the publication on, for example, social networking sites by a parent of information that may identify a teacher as being subject to an allegation, would be a possible breach of the law.

Apart from this initial gathering of information, an investigation should not be carried out until the LADO has been contacted, which should be done without delay.

The purpose of an initial discussion is for the LADO, and the Principal or other senior leader, to consider the nature, content and context of the allegation and agree a course of action under the terms of the Statutory Guidance. The LADO may ask the referrer to provide or obtain 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.

The LADO may, depending on the initial details shared, require the referrer to complete and return immediately an 'allegation referral form'.

The LADO may need to consult other agencies immediately such as Children's Social Care, the Police and HR before an initial, strategy is agreed.

Consideration will need to be given to issues such as:

- the course of action if allegation does not reach allegation threshold
- convening a strategy meeting and interim measures
- possible precautionary suspension or change of duties pending investigation
- informing parents/ carers
- informing the member of staff
- interviewing witnesses
- possible immediate Social Care and / or police investigation
- support for the child and member of staff pending appropriate actions.

If an allegation is initially received by Police, Social Care, or other agencies they will contact the LADO who will contact the Principal or HR (or other senior leader, as appropriate) as soon as possible to consider the issues above and agree an initial strategy.

Following these initial steps the LADO will oversee the progress of the appropriate level of investigation and liaise with the school and agencies involved as detailed in 'Keeping Children Safe in Education part 4-Allegations of Abuse against Teachers and other staff'

- ensure that any employees facing an allegation are provided with effective ongoing support and regular updates about the progress of the case; advise the employee (including supply staff) to contact their Trade Union representative (or full time official, if the employee is a Trade Union representative)
- in the case of an allegation against an individual not directly employed by the trust or academy, where the trust's disciplinary procedures do not fully apply e.g. supply staff provided by an employment agency or business, the academy will work with the agency/employer to ensure allegations are dealt with properly in accordance with the statutory guidance – see Annex A paragraphs 374- 377.
- Under no circumstances decide to cease to use a member of supply staff, outside support worker due to safeguarding concerns without finding out the facts and liaising with HR and their LADO.
- usually take a lead or support the ongoing investigations regarding supply staff/visiting support staff whilst ensuring agencies are fully involved in any investigation.
- keep supply agencies used by the academy fully informed of the trust's process for managing allegations.
- ensure that parents or carers of a child or children involved are told of the allegation, made aware of the prohibition on reporting or publishing allegations about teachers, and are kept up to date with information about the progress of the case
- only suspend the person facing an allegation when absolutely necessary and when all options to avoid suspension have been considered
- at the conclusion of a case where the allegation is substantiated and the person is dismissed or removed from regulated activity, decide whether appropriate to make a referral to the
  - Disclosure & Barring Service (DBS) for consideration of inclusion on the barred lists is required; and in the case of a member of teaching staff, whether to refer the matter to the Teaching Regulation Agency (TRA).

- Where an allegation is found to be unsubstantiated, malicious or deliberately invented, consider whether any follow-on actions are required in respect of the 'accuser' such as referral to the police or action under Trusts behaviour policies.
- Keep a clear and comprehensive confidential record of all allegations made (other than those found to be malicious) on the individual's personnel file; and not refer to false, unsubstantiated or malicious allegations in any references.
- Retain records until normal retirement age or 10 years from the allegation; whichever is longer.
- Carry out a case review at the conclusion of any cases, to identify whether any improvements can be made leading to improved practice, either to the academy procedures or to help prevent similar events in the future.

The Trust will:

- Provide support, as required, to any of its academies that are dealing with allegations against staff

## **5.0 Review**

The Policy will be reviewed every two years or when the DfE issues revised guidance on keeping children safe in education.

## Appendix A

### Keeping children safe in education Statutory guidance for schools and colleges September 2023 paragraph 356 – 423.

#### Part four: : Safeguarding concerns or allegations made about staff, including supply teachers, volunteers and contractors

##### Section one: Concerns or allegations that may meet the harm threshold

356. This part of the guidance is about managing cases of concerns/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 or college. In this part (section one) of the guidance reference is made to 'allegation' for ease. This part of the guidance should be followed where it is alleged that anyone working in the school or a college that provides education for persons 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.**

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

358. 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).

359. It is important that policies and procedures make clear to whom allegations should be reported (as set out at paragraph 72) and that this should be done without delay. A "case manager" will lead any investigation. This will be either the headteacher or principal, or, where the headteacher is the subject of an allegation, the chair of governors or chair of the management committee and in an independent school it will be the proprietor.

##### The initial response to an allegation

360. Where the school or college identifies that a child has been harmed, that there may be an immediate risk of harm to a child, or if the situation is an



emergency, they should contact local authority children's social care and as appropriate the police immediately as per the processes explained in Part one of this guidance (KCSiE 2023).

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

- **Looking after the welfare of the child** – the designated safeguarding lead (or deputy) is responsible for ensuring that the child is not at risk and referring cases of suspected abuse to the local authority children's social care as described in Part one of this guidance (KCSiE 2023).
- **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.

362. When dealing with allegations, schools and colleges 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.

363. Schools and colleges should ensure they understand the local authority arrangements for managing allegations, including the contact details and what information the LADO will require when an allegation is made. Before contacting the LADO, schools and colleges should conduct basic enquiries in line with local procedures to establish the facts and to help them determine whether there is any foundation to the allegation, being careful not to jeopardise any future police investigation. For example whether:

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

364. These are just a sample of example questions. Schools and colleges should be familiar with what initial information the LADO will require. This information can be found in local policy and procedural guidance provided by the LADO service.

365. 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, and if appropriate local authority children's social care and the police.

366. If there is cause to suspect a child is suffering, or is likely to suffer significant harm, a strategy discussion involving the police and/or local authority children's social care will be convened in accordance with the statutory guidance [Working Together to Safeguard Children](#). If the allegation

is about physical contact, for example restraint, the strategy discussion or initial evaluation with the LADO should take into account that teachers and other school and college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour. Further information about the use of reasonable force can be found at paragraphs 163- 165 in Part Two of this guidance and on [GOV.UK](https://www.gov.uk).

367. Where the case manager is concerned about the welfare of other children in the community or the member of staff's family, they should discuss these concerns with the designated safeguarding lead (or deputy) and make a risk assessment of the situation. It may be necessary for the designated safeguarding lead to make a referral to local authority children's social care.

368. 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 assessment decides that is the case, the LADO should discuss the next steps with the case manager.

### **No further action**

369. 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**

370. 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. The LADO will provide advice and guidance to schools and colleges when considering allegations against adults working with children. The role of the LADO is not to investigate the allegation, but to ensure that an appropriate investigation is carried out, whether that is by the police, local authority children's social care, the school or college, or a combination of these. In straightforward cases, the investigation should normally be undertaken by a senior member of the school or college's staff.

371. Where there is a lack of appropriate resource within the school or college, or the nature or complexity of the allegation requires it, the allegation will require an independent investigator. Many local authorities provide for an independent investigation of allegations for schools that are maintained by the local authority, often as part of the HR/personnel services that schools and colleges can buy in from the authority. It is important that local authorities ensure that schools and colleges in that area have access to

an affordable facility for independent investigation where that is appropriate. Colleges, academies and independent schools should also ensure they secure the services of a person who is independent of the school or college.

372. The case manager should monitor the progress of cases to ensure that they are dealt with as quickly as possible in a thorough and fair process. Wherever possible, the first review should take place no later than four weeks after the initial assessment.

373. Dates for subsequent reviews, ideally at fortnightly (and no longer than monthly) intervals, should be set at the review meeting if the investigation continues.

### **Supply teachers and all contracted staff**

374. In some circumstances schools and colleges will have to consider an allegation against an individual not directly employed by them, where its disciplinary procedures do not fully apply because agencies will have their own policies and procedures; for example, supply teachers or contracted staff provided by an employment agency or business.

375. Whilst schools and colleges are not the employer of supply teachers, they should ensure allegations are dealt with properly. **In no circumstances** should a school or college decide to cease to use a supply teacher due to safeguarding concerns, without finding out the facts and liaising with the LADO to determine a suitable outcome. Governing bodies and proprietors should discuss with the supply agency or agencies where the supply teacher is working across a number of schools or colleges, whether it is appropriate to suspend the supply teacher, or redeploy them to another part of the school or college, whilst they carry out their investigation.

376. Agencies should be fully involved and co-operate with any enquiries from the LADO, police and/or local authority children's social care. The school or college will usually take the lead because agencies do not have direct access to children or other school or college 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 or college, are under the supervision, direction and control of the governing body or proprietor when working in the school or college. 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 or agencies are considered by the school or college during the investigation.

377. When using a supply agency, schools and colleges should inform the agency of the process for managing allegations but also take account of the agency's policies and the duty placed on agencies to refer to the DBS as personnel suppliers. 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.

### **Organisations or Individuals using school premises**

378. Schools and colleges may receive an allegation relating to an incident that happened when an individual or organisation was using their school premises for the purposes of running activities for children (for example community groups, sports associations, or service providers that run extra-curricular activities). As with any safeguarding allegation, schools and colleges should follow their safeguarding policies and procedures, including informing the LADO.

#### Governors

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

### **Suspension**

380. 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 college, 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 or college is/are at risk of harm, or the case is so serious that there might be grounds for dismissal. If in doubt, the case manager should seek views from their personnel adviser and the LADO, as well as the police and local authority children's social care where they have been involved.

381. Where a school or sixth form college is made aware that the Secretary of State has made an interim prohibition order, in respect of an individual who works at a school or sixth form college, they should take immediate action to ensure the individual does not carry out work in contravention of the order. This means that pending the findings of the Teaching Regulation Agency (TRA) investigation, the individual **must not** carry out teaching work. School and colleges should have clear policies on pay arrangements whilst the person is suspended or where there is an interim prohibition order in place.

382. 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 or college, based on consultation with the LADO who will provide relevant information received from the police or local authority children's social care on whether they have any objections to the member of staff continuing to work during the investigation of the case.

383. Based on advice from the school or college's HR provider and/or a risk analysis drawn up with the LADO, the following alternatives should be considered by the case manager before suspending a member of staff:

- redeployment within the school or college 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 or college 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 interests of the child or children concerned and takes account of their views. It should be made 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 college or where available, work for the local authority or academy trust.

384. 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.

385. 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.

386. 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.

387. Local authority children's social care or the police may give their view to the LADO, but they cannot require the case manager to suspend a member of staff or remove a volunteer, although the case manager should give

appropriate weight to their views. The power to suspend is vested in the governing body or proprietor who are the employers. However, where a strategy discussion, or initial assessment, concludes that there should be enquiries by local authority children's social care, and/or an investigation by the police, the LADO should canvass police and local authority children's social care for views about whether the accused member of staff should be suspended from contact with children. 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 about whether the person poses a risk of harm to children.

## **Supporting those involved**

### **Duty of care**

388. 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 to 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.

389. Employers have a duty of care to their employees. They should:

- manage and minimise the stress caused by the allegation
- inform the individual as soon as possible, explaining the likely course of action, guided by the LADO, and the police where necessary
- advise the individual to contact their trade union representative, or a colleague for support
- appoint a named representative to keep the person informed about the progress of the case
- provide access to counselling or medical advice where appropriate. For staff in schools maintained by the local authority this may include support via the local authority's occupational health arrangements, 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.

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

- formally told about the allegation as soon as possible. The case manager should consult the LADO and where involved, local

authority 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 as set out in section 141F of the Education Act 2002.

### **Confidentiality and Information sharing**

391. In an allegations management meeting or during the initial assessment 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, see paragraphs 115-123 in Part two about information sharing.

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

393. Local authority children'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 employer without delay. In deciding what information is disclosed, careful consideration should be given to the provisions of the Data Protection Act 2018, the law of confidence and, where relevant, the Human Rights Act 1998.

394. The school and college **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).

395. The reporting restrictions apply until:

- the point that the accused person is charged with a relevant offence, or

- the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation.

396. 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.

397. The legislation prevents the “publication” of material by any person that may lead to the identification of the teacher who is the subject of the allegation. “Publication” includes “any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public.” This means that a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public). In circumstances where schools need to make parents aware about an allegation, they should make parents and others aware that there are restrictions on publishing information.

398. In accordance with the [Authorised Professional Practice published by the College of Policing](#) in May 2017, 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 wish to depart from that rule, for example an appeal to trace a suspect, they must apply to a magistrates’ court to request that reporting restrictions be lifted.

399. The case manager should take advice from the LADO, the police and local authority children’s social care to agree the following:

- who needs to know and 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.

### **Allegation outcomes**

400. The definitions that should be used when schools and colleges determine the outcome of an allegation 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.

401. Ultimately the options open to the school or college 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.

#### **Following a substantiated allegation**

402. 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.

403. In the case of a member of teaching staff at any school, sixth form college, or 16- 19 academy, the case manager **must** consider whether to refer the matter to the TRA to consider whether the individual should be prohibited from teaching (paragraph 351 for further information)

404. 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 (paragraph 348 for further information).

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

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

- a criminal investigation and any subsequent trial are 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.

406. 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. The information provided by the police and/or local authority children's social care should also inform that decision. The options will depend on the circumstances of the case and the consideration should 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.

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

407. If an allegation is determined to be unsubstantiated, unfounded, false or malicious, the LADO and the case manager should consider whether the child and/or the person who has made the allegation is in need of help or may have been abused by someone else and this was a cry for help. In such circumstances, a referral to local authority children's social care may be appropriate.

408. If an allegation is shown to be deliberately invented or malicious, the school or college, should consider whether any disciplinary action is appropriate against the individual who made it as per their own behaviour policy.

### **Returning to work**

409. 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. 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 case manager 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 school or college.

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

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

410. '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 or college investigation where that is appropriate.

411. Schools and colleges 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 with a bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate.

412. Wherever possible, the accused should be given full opportunity to answer the allegation and make representations about it. The process of recording the allegation and any supporting evidence and reaching a judgement about whether it can be substantiated or otherwise on the basis

of all the information available, should continue even if 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 an outcome wherever possible. The person concerned should be notified of the conclusion of the allegations and sanctions that might be posed.

413. Other than where allegations are false, malicious, unsubstantiated, or unfounded, the outcome should be made clear when providing references to prospective employers. This is particularly important where the person moves into another position involving working with children.

414. It is not appropriate to reach a settlement/compromise agreement if the person subject to the allegation resigns or their services cease to be used. However, in limited circumstances schools and colleges sometimes use settlement agreements to end the employment relationship on agreed terms, but not where there is an allegation that the individual poses a risk to children.

415. Where a settlement/compromise agreement is used, schools and colleges should not let it prevent the employer from:

- fulfilling their legal duty to refer cases to the DBS where the referral criteria are met – see paragraph 348. Non-compliance of this duty is a criminal offence, or
- providing a reference to potential employers when requested, or
- considering whether to make a referral to the TRA where the criteria are met - see paragraph 351.

### **Record keeping**

416. Details of allegations following an investigation that are found to have been malicious or false should be removed from personnel records unless the individual gives their consent for retention of the information. However, for all other allegations, i.e. substantiated, unfounded and unsubstantiated it is important that the following information is kept on the file of the person accused:

- a clear and comprehensive summary of the allegation
- details of how the allegation was followed up and resolved
- a note of any action taken, decisions reached, and the outcome i.e. substantiated, unfounded or unsubstantiated
- a copy provided to the person concerned, where agreed by local authority children's social care or the police, and
- a declaration on whether the information will be referred to in any future reference.

417. The purpose of the record is to enable accurate information to be given in response to any future request for a reference. 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.

418. All other records 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.

419. The Information Commissioner has published guidance on employment records in its [Employment Practices Code and supplementary guidance](#), which provides some practical advice on record retention.

## **References**

420. Cases in which an allegation was found to be false, unfounded, unsubstantiated or malicious should not be included in employer references. Any repeated concerns or allegations which have all been found to be false, unfounded, unsubstantiated or malicious should also not be included in any reference. See paragraph 224 for further information on references. Substantiated safeguarding allegations that meet the harm threshold should be included in references, provided that the information is factual and does not include opinions.

## **Learning lessons**

421. Throughout the process in handling allegations and at conclusion of a case in which an allegation is substantiated, the LADO should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the school's or college's procedures to help prevent similar events in the future. This should include issues arising from any 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 case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

422. For all other cases, where the allegation concluded to be either, unfounded, false, malicious or unsubstantiated the case manager (and if they have been involved the LADO) should consider the facts and determine whether any lessons can be learned and if improvements can be made.

## **Non recent allegations**

423. Where an adult makes an allegation to a school or college that they were abused as a child, the individual should be advised to report the allegation to the police. Nonrecent allegations made by a child, should be reported to the LADO in line with the local authority's procedures for dealing with non-recent allegations. The LADO will coordinate with local authority children social care and the police. Abuse can be reported no matter how long ago it happened.