



Management of Allegations against Staff

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TYPE OF POLICY		APPROVAL LEVEL	

ALLEGATIONS AGAINST STAFF / VOLUNTEERS IN WORK

(Set Procedures 2011 326 Allegations against people who work with children, Section 11.4)

TERMINOLOGY

The term employer refers to all organisations, who have a working relationship with the individual against whom an allegation is made. For the purpose of these procedures, a 'worker' is a person whose work brings them into contact with children. This includes:

- Individuals working in a voluntary capacity Agency staff
- Contract workers (consultants or the self-employed)
- Those working on or off site e.g. undertaking home visits
- The self-employed
- Temporary and permanent employees Fostering services
- Regulatory bodies such as Ofsted in the case of child minders

It is not possible within a single document to differentiate between the many different providers of services to children and their related professional languages. Individual organisations, services or professionals, therefore, may need to adapt the terminology used when applying this guidance to their own circumstances.

PERSPECTIVES

An allegation may require consideration from any of the following four inter-related perspectives:

- Child protection enquiries by Children's Social Care
- Criminal investigation by the Police
- Staff disciplinary procedures of employing agency
- Complaint procedures of employing agency

These procedures deal with child protection enquiries and any associated criminal investigation and complaints of poor practice and disciplinary procedures when there could be a child protection element.

When an allegation is made by a child who lives in one area and concerns an adult working in another area, the allegations management process should be led by the LADO who has responsibility for the LSCB area where the alleged incident took place.

WHEN TO CONTACT THE LADO

It is important to ensure that even apparently less serious allegations are seen to be followed up, and that someone independent of the organisation concerned examines them objectively.

An initial discussion must always take place between the employer and the LADO when the concern or allegation meets the criteria in 11.1.1.

REPORTING CONCERNS / SUSPICIONS / ALLEGATIONS

Employers may seek the advice of the LADO where an employee's behaviour is a matter for concern to her/his manager because it compromises, or may seem to compromise the reputation and the ability of the organisation to safeguard children and young people. This is a difficult area and one in which managers will need to exercise professional judgement. Some examples of such behaviour may be where an individual has:

- Contravened or continued to contravene any safe practice guidance given by his / her organisation or regulatory body
- Exploited or abused a position of power

- Acted in an irresponsible manner which any reasonable person would find alarming or questionable given the nature of the work undertaken
- Demonstrated a failure to understand or appreciate how his / her own actions or those of others could adversely impact upon the safety and well-being of a child
- Demonstrated an inability to make sound professional judgements, which safeguard the welfare of children
- Failed to follow adequately any policy or procedures relating to safeguarding and promoting the welfare of children
- Failed to understand or recognise the need for clear personal and professional boundaries in their work
- Behaved in a way in their personal life which could put children at risk of harm
- Become the subject of criminal proceedings not relating to a child
- Become the subject to enquiries under local child protection procedures
- Behaved in a way which seriously undermines the trust and confidence placed in them by their employer

At this stage, the manager should ensure that they have a factual account of the allegation, which they must date and sign. Children and adults must not be asked to write down their account at this time.

Any allegation of abuse must be reported to the worker's line manager or senior manager as described in internal agency procedures. Within an academy this will be the Head of Academy, or in her/his absence her/his deputy.

If the above manager is implicated, the concern must be reported to a senior manager or designated / named person for child protection in that agency. Within an academy this will be the chair of governors.

In either case a record of the report, which is timed, dated and includes a clear name or signature must be made. The recipient of an allegation must not unilaterally determine its validity, and failure to report it in accordance with procedures is a potential disciplinary matter.

Any member of staff who believes allegations or suspicions which have been reported to the appropriate manager are not being investigated properly has a responsibility to report it to a higher level in the agency or directly to the LADO.

The LADO must be told immediately and always within one working day of **all** allegations that come to the employer's attention and appear to meet the criteria in paragraph 11.1.1, so that s/he can consult or refer to Police and Children's Social Care as appropriate.

If, for any reason there are difficulties following the above procedures, whistle blowing (see 13.7) should be considered or a referral made directly to Children's Social Care and / or the Police.

Need for consultation must not delay a referral, which should be in accordance with module 5 in this manual.

INITIAL CONSIDERATION OF ALLEGATION

The purpose of the initial consideration / discussion is for the LADO and the senior manager to consider the nature, content and context of the allegation and agree a course of action.

Procedures need to be applied with common sense and judgement. Some allegations will be so serious as to require immediate referral to Children's Social Care and the Police for investigation. There are up to four strands in the consideration of any allegation:

- A Police investigation of a possible criminal offence
- Children's Social Care enquiries / assessment about whether a child is in need of protection or services
- Consideration by an employer of disciplinary action or performance management
- Employer's complaint procedures

The LADO and employer should consider whether further details are needed and whether there is evidence / information that establishes whether the allegation is false or unfounded.

Child suffering or likely to suffer significant harm

If there is cause to suspect that a child is suffering or is likely to suffer significant harm, the LADO will agree, during the initial consultation, who will make an immediate referral to Children's Social Care. Children's Social Care will organise a strategy / management planning meeting (see module 6 and 11.4.44 - 53).

Criminal offence suspected, but significant harm threshold not reached

If 'significant harm' is not considered an issue, but a criminal offence might have been committed, the LADO must immediately inform CAIT, conduct discussions, agree any need for a formal meeting and share information with any other agencies involved with the child to evaluate the allegation and decide on any other action required e.g. need for disciplinary action. Children's Social Care should be informed.

Investigation by Police / enquiries by Children's Social Care not required

If clear from the outset, following initial consideration or from the conclusions of the strategy / management planning meeting, that neither the Police nor Children's Social Care need to be involved, the LADO should discuss the next steps with the employer.

11.4.25

This discussion must take account of any information provided by the Police and Children's Social Care. See 11.4.60-65 for further information of options and required timescales.

MANAGING ISSUES RELATING TO THE SUBJECT OF THE ALLEGATIONS

Information & support

After consulting the LADO the employer should inform the worker (who is the subject of allegations) as soon as possible. The LADO should always first consult the Police / Children's Social Care if either agency is likely to be involved or a strategy discussion / management planning meeting needed, in order to agree what information can be disclosed (see 11.4.44 – 53).

The subject of the allegations should be:

- From the outset to contact her/his Union or professional association or seek other relevant advice e.g. from the CAB or a solicitor
- Treated fairly and honestly and helped to understand the concerns expressed, processes involved and the possible outcomes
- Kept informed of the progress of the case and of the investigation
- Clearly informed of the outcome of any investigation and the implications for disciplinary or related processes.
- Provided with appropriate support during the case (via occupational health or employee welfare arrangements where these exist)
- Be kept informed about workplace developments if suspended

If a suspended person is to return to work, the employer should consider appropriate help / support e.g. phased return and/or provision of a mentor and how to manage the person's contact with any child/ren that made the allegation.

Suspension

The possible risk of harm to children posed by an accused person needs to be effectively evaluated and managed. In some cases, this will require the employer to consider suspending the person.

A decision to suspend or temporarily re-deploy staff is made without prejudice and rests with the employing agency (academy governing body in the case of a academy). Neither the local authority the Police nor Social Care can require an employer to suspend a member of staff or a volunteer. The power to suspend is vested in the employer alone.

Suspension should not be automatic, but it should be considered in any case where:

- Not to suspend may continue or increase the risk of significant harm for any child or
- Not to suspend may hamper investigations
- The allegation warrants investigation by the Police
- The allegation is so serious that it might be grounds for dismissal

If Children's Social Care or Police are to make enquiries or investigate, the LADO should canvass their views on suspension and inform the employer.

Where suspension is not appropriate, consideration should be given to putting safeguards in place to protect the child/ren and the adult involved e.g. undertaking alternative work or the provision of additional adult support.

Resignations & compromise agreements

All investigations into allegations should be completed and the outcome recorded, regardless of whether the person involved resigns her/his post, responsibilities or a position of trust, even if the person refuses to co-operate with the process.

'Compromise agreements', where a person agrees to resign without any disciplinary action and agreed future reference, must not be used in these cases.

RESPONSE BY CHILDREN'S SOCIAL CARE & POLICE CAIT

General

The social worker, police officer or any other staff member within Children's Social Care must always inform her/his line manager of any allegations received.

The receiving agency (CAIT or Children's Services Social Care) must in turn alert the other agency (Children's Social Care / CAIT)

In cases where the LADO has not been involved in the referral, s/he must be informed immediately of the concerns / allegations.

The organised and complex abuse procedures, if applicable (see 9.24) take priority over those detailed below.

Allegations against Children's Social Care staff

If an allegation is made, about any staff member employed by Children's Social Care the manager must inform the safeguarding manager and head of Children's Social Care, who must ensure that an appropriately senior manager directs the enquiry and chairs the strategy / management-planning meeting.

If an allegation is made about the LADO then the procedures remain the same but must be managed by the LADO's Head of Service.

Achieving an appropriate degree of independent scrutiny over the process and an independent element in the investigation may involve:

- Appointment of external independent investigator/s to supplement or replace the team and/or to oversee the process
- Use of staff within the organisation who are sufficiently separate from the line management of those against whom the allegation is made e.g. child protection advisors and manager
- A reciprocal arrangement with another local authority

Allegations against staff working in regulated environments

Ofsted must be notified of any action taken under the child protection procedures in any registered establishment by the registered manager.

STRATEGY / MANAGEMENT PLANNING MEETING

Meeting participants should be sufficiently senior to contribute available information and make decisions on behalf of their agencies. It may include an employer's representative (unless good reasons not to), 'LADO, Children's Social Care, Police, referring agency and other bodies as appropriate e.g. academy, medical consultant.

The strategy discussion / management planning meeting should be a face-to-face meeting. However, initial enquiries and discussions may take place over the telephone.

All agencies concerned should share all relevant available information about the allegation, child and accused person. A strategy / management planning meeting should be arranged within three working days of the receipt of the allegation or concern with a core membership consisting of:

- First line manager (Essex) or LADO (Southend and Thurrock) to chair the meeting
- Local authority designated officer (or nominee)
- Police CAIT
- Senior member of the organisation of the worker concerned, but **not** the line manager of the subject of enquiries

Depending on the circumstances additional membership may include:

- Personnel / human resources representatives as appropriate (and upon invitation by the employer)
- Relevant social worker and her/his manager
- Those responsible for regulation and inspection of the unit e.g. Ofsted, if applicable
- Consultant paediatrician if sexual abuse alleged
- Lead / named / designated professional for child protection for the agency in question
- A representative of the other local authority if the child is placed, or alleged perpetrator is resident there
- Complaints officer if the concern has arisen from a complaint, or a complaint investigation is in progress
- A representative of the legal department
- The Supervising Social Worker in respect of allegations against foster carers

Where the representative of an agency is implicated through an accusation of collusion or failure to respond to previous complaints, it may be inappropriate for her/him to attend the strategy / management-planning meeting. The chair of the meeting will have discretion about the decision.

The meeting (preferably with a dedicated minute taker) must:

- Conduct its business according to *Working Together 2010*
- Have in-depth discussions of the nature, contact and context of the allegation and why the alleged behaviour is a cause for concern
- Consider the person's suitability to continue working with children in their current position
- Discuss the background of the alleged perpetrator any previous allegations or concerns
- Discuss the child, their circumstances, any special educational needs, any additional vulnerability and any previous allegations made

- Review the need for the involvement of Children's Social Care or the Police
- Plan any enquiries needed, allocate tasks and set timescales
- Decide what information can be shared with whom and when
- Consider what advice and support should be made available to the member of staff and the child / child's family
- Consider any other factors that may affect the management of the case e.g. media interest, confidentiality
- Where the allegation relates to an individual who is not an employee, the meetings should determine who will take the lead in any subsequent action
- Decide whether there should be a s.47 enquiry and/or an internal disciplinary investigation
- Consider the implications arising from the CAIT decision whether or not to investigate an allegation of crime
- Consider, if a s.47 enquiry is appropriate, whether a complex abuse investigation is applicable
- Scope and plan the s.47 enquiry

The meeting must also:

- Ensure any emergency action needed to protect a child is taken
- Ensure all children who may be affected directly or indirectly are identified, considered and provided with support, including ex-residents if appropriate
- Consider (where relevant) which other authorities should be informed
- Ensure the investigation is sufficiently independent
- Make arrangements to ensure the safety of children known to the worker outside of the workplace
- Make arrangements to inform child's parents, and consider how to involve them / provide support and information during enquiries
- Consider the safety of children after the enquiry
- Recommend to employing agency or responsible authority any action required to protect the interests of children whilst enquiries are conducted, including staff transfer, suspension or removal (such action is the responsibility of the employing / responsible)
- Agree which manager within each agency will be responsible for co-ordinating the investigation
- Consider the need to interview other current or ex staff members
- Consider the need for individual support for any workers, including those who are the subject of allegations (e.g. local authority occupational health or employee welfare arrangements)
- Consider linkage and impact on industrial relations, personnel issues, registration and complaints issues
- Consider use of any record of video interviews for disciplinary purposes
- Consider the future of an establishment if it is considered abuse has pervaded the whole staff group with management involvement or collusion
- Consider possible claims for compensation and alert insurers
- Consider notifying the chief executive / senior officer of the employing agency
- Identify the information to be shared with the alleged abuser
- Agree on management of any anticipated media interest

The strategy / management-planning meeting should set a review date within one month of the referral being received with a view to concluding the enquiry as soon as possible.

In addition to the issues addressed at the first meeting, subsequent monthly meetings must also address:

- Progress and results of enquiries
- Therapeutic and support needs of child/ren
- Appropriate applications for criminal injuries compensation
- Support needs of all appropriate staff

- Future needs of the establishment

A strategy / management-planning meeting should be held at the completion of enquiries.

CONDUCT OF ENQUIRY

The enquiry should take into account any signs or patterns, which could suggest the abuse may be more widespread than it appears and involves other alleged perpetrators or institutions.

During the course of the enquiries, the chair of the strategy / management planning meeting and the LADO must be provided with regular progress reports as agreed at the initial meeting.

Sharing information & disciplinary purposes

The Police should obtain consent for information given by the victim and witnesses to be used for the purpose of disciplinary and regulatory proceedings at the time they take statements, so that information can be disclosed quickly if appropriate. This applies without regard to the outcome of the enquiry or Police investigation.

Social workers should adopt a similar procedure to ensure that relevant information can be passed to employers without delay.

If the Police / CPS decide not to charge or to administer a caution or the person is acquitted, the CAIT should pass all relevant information to the employer without delay.

If the person is convicted, the CAIT should also inform the employer immediately so that appropriate action can be taken.

ACTION FOLLOWING S.47 ENQUIRY & / OR CRIMINAL INVESTIGATION

The Police or CPS should inform the employer and LADO straightaway if:

- It is decided to close an investigation without charge or
- It is decided not to prosecute or
- A criminal investigation and any subsequent trial is complete

The LADO and employer should discuss the next steps, which include:

- No further action
- Further investigation to decide how to proceed (usually undertaken by the employer, but the employer may need to commission an independent investigation, dependent on resources and the nature and complexity of the allegation)
- Summary dismissal
- Decision not to use the person's services in the future, including where the individual is not directly employed
- Formal request to Police / Children's Social Care for statements / evidence that may be used for disciplinary purposes

The discussion should take into account Police and Children's Social Care information, the result of any investigation or trial and the different standard of proof in disciplinary and criminal proceedings.

If formal disciplinary action is not required, 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.

The investigating officer should aim to provide a report within 10 working days. On receipt, the employer should decide whether a disciplinary hearing is needed within two working days and if so it should be held within 15 working days.

DEFINITIONS OF THE FINAL OUTCOME OF AN ALLEGATION

Founded or Substantiated Allegations:

- Where the Police are beyond reasonable doubt and other professionals agree that within the balance of probabilities the allegation is true

Unfounded Allegations:

- Where there is evidence that disproves the allegation. The allegation is proved to be false

Unsubstantiated Allegations:

- Where there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence

Malicious Allegations:

Where there is evidence that not only disproves the allegation but also proves a deliberate intent to deceive

SUBSTANTIATED ALLEGATIONS: REFERRAL TO THE INDEPENDENT SAFEGUARDING AUTHORITY (ISA, OR REGULATORY BODY)

If the allegation is substantiated and the person is dismissed or the employer ceases to use the person's services, or the person resigns or otherwise ceases to provide her/his services, the LADO should discuss with the employer whether a referral to ISA is required, or advisable, and the form and content of such a referral. Further guidance and referral criteria can be found on www.isa.homeoffice.gov.uk

The LADO should also advise whether it is appropriate to make a referral to a professional body or regulatory body e.g. the General Social Care Council, General Medical Council, OFSTED etc.

If a referral is appropriate, the report should be made within one month of the conclusion of the case. This is usually undertaken by HR services.

UNSUBSTANTIATED ALLEGATIONS

Where, following initial enquiries, it is concluded there is insufficient evidence to determine whether the allegation is substantiated, the chair of the strategy / management planning meeting will ensure relevant information is passed to the employing agency. The relevant senior manager of that agency will consider what further action, if any, should be taken in consultation with the LADO.

- The member of staff concerned must be notified in writing of the outcome. The child and parents should also be informed of the outcome.
- Consideration must be given to:
- Any support the staff member may need, particularly if returning to work following suspension e.g. phased return, mentor
- The provision of support or counselling for the child, and if appropriate her/his parents, taking full account of a child's needs if a seemingly unfounded or malicious allegation has been made
- How to manage any future contact between the member of staff and the child/ren who made the allegation

Staff conducting disciplinary proceedings must be informed in writing when the child protection enquiry has been concluded (see 11.4.93 - 101 for recording of such outcomes).

ACTION IN RESPECT OF UNFOUNDED ALLEGATIONS

If an allegation is determined to be unfounded, the employer / LADO should consider:

- Referring the matter to Children's Social Care to determine if the child is in need or may have been

abused by someone else.

- Asking Police to consider what action may be appropriate in the rare event an allegation was deliberately invented or malicious

DISCIPLINARY PROCEDURES

Any disciplinary process must be clearly separated from child protection enquiries.

The overall responsibility to reach a conclusion to the allegation rests with the employer with the support of their own Human Resources provision. The LADO can be consulted for advice and support if appropriate.

Child protection enquiries take priority over any disciplinary investigations, and will determine whether investigations can be carried out concurrently.

The fact that there may be insufficient evidence to support a Police investigation or prosecution should not prevent any action being taken that is necessary to safeguard a child's welfare. For the Police the burden of proof is 'beyond reasonable doubt'. For employers the burden of proof is 'the balance of

probability'. Therefore employers are able to instigate disciplinary procedures when the Police are unable to take further action.

It may be that the allegation was prompted by inappropriate behaviour, not considered sufficiently harmful under the child protection procedures, but which may still need to be considered under the disciplinary procedures.

Following notification that the child protection enquiry and or criminal investigation has been concluded, staff conducting any disciplinary proceeding will have relevant information from Children's Social Care and the CAIT made available to them.

All possible steps must be taken to avoid repeat interviews of a child.

INFORMING THE FOSTERING / ADOPTION PANEL

The fostering / adoption team must review the status of the carer/s within 28 days of the conclusion of the enquiry and present a review report to the fostering / adoption panel. The report will address:

- The findings of the enquiry, including if a report has been forwarded to the Crown Prosecution Service
- What, if any concerns remain
- Whether a report has been forwarded
- The views and experience of the carer
- The views of the family placement / supervising social worker
- Training issues
- Any other issues relevant to an annual review
- Other information relevant to the child in placement

This process provides the carer/s with the opportunity to reflect on their experience and consider what action they might wish to consider. They must be informed of the panel date and information on the complaints and access to files procedures.

Following the review, the service manager must confirm in writing to the carer/s the recommendation that will be made to the panel along with a copy of the review report. The possible recommendations are:

- Immediate re-instatement of carer/s if approval and use had been suspended
- Re-assessment of the carer/s in relation to the identified concerns
- Carer/s remaining on hold pending the decision of the CPS
- Carer/s choosing to withdraw

Concerns are sufficiently serious to warrant termination of approval regardless of CPS decision about prosecution

THE PANEL

The panel must consider the following information prior to drawing its conclusions:

- The review report and recommendations by supervising social worker
- Any written submission by the carer/s
- Minutes from any relevant child protection conference

Both the supervising social worker and her/his manager must attend the panel meeting

The panel chair should without delay, forward the panel's recommendations to the 'agency decision maker'. The decision maker, informed by the panel's conclusions, must then make her/his determination and progress it in accordance with:

- For foster carers, the Fostering Services Regulations 2011
- For approved adopters, the Adoption Agencies Regulations 2005 – amended 2011

A copy of the final outcome must be sent to the service manager (fostering / adoption / family placement) for inclusion on the carer's file.

RECORDING

Record keeping is an integral part of all safeguarding processes. Those which relate to the management of allegations need to document a complete picture of the events, decisions or actions so it is clear when something happened, how a decision was made and what chain of events led to a particular action. Employers are required to keep all records pertaining to allegations where these involve a child or young person and, if concerns arise which relate to the welfare or safety of a child or young person, employers are under a legal obligation to disclose information held on record to Police or Social Care agencies. The Data Protection Act 1998 lays down strict rules on how information about individuals should be managed; personal data must be kept secure and up to date and must not be maintained for longer than the purpose for which the data was gathered.

Records of allegations however must be retained **at least** until the subject of the allegation reaches normal retirement age, or 10 years from the date of the allegation if that is longer.

Records should be kept and maintained at every stage of the process thus ensuring that sound decisions are made on full, accurate and up to date information and that the rationale for those decisions can be traced, scrutinised and justified where necessary. Records relating to allegations which have been found to be without substance must also be retained.

A chronology of key events, decisions and actions taken should also be maintained to provide a quick overview of progress.

Individuals are entitled to have access to their personal details held as computerised or manual records. Employers have a responsibility, however, to remove personal data about a third party before complying with an access request.

Working Together states that the purpose of record keeping relating to allegations is to:

- Enable accurate information to be provided in response to future requests for references
- Provide clarification in cases where a future CRB Enhanced Disclosure reveals information from the Police that an allegation was made but did not result in a prosecution or conviction
- Prevent unnecessary re-investigation if an allegation re-surfaces in the future

Accurate record keeping and retention also allows for patterns of behaviour, which may pose a risk to children to be identified. Throughout the process of managing an allegation it is important that a clear chronology of all discussion and actions is maintained by both the LADO and the senior manager or employer.

LEARNING LESSONS

If an allegation is substantiated, the employer should review the circumstances of the case to determine whether there are any improvements to be made to the organisation's procedures or practice to help prevent similar events in the future.

This guidance is taken from *Working Together to Safeguard Children 2010, Safeguarding Children and Safer Recruitment in Education DCSF 2007* issued under section 175 and 157 of the Education Act 2002.