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ARDEN forest

C of E Multi Academy Trust

ALLEGATIONS AGAINST STAFF OR PERSONS IN POSITION OF TRUST

Taken from Regional Child Protection Procedures for West Midlands.

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1. Introduction and Criteria

All allegations of abuse of children by those who work with children must be taken seriously. Allegations against any person who works with children, whether in a paid or unpaid capacity, can cover a wide range of circumstances.

This procedure should be applied when there is an allegation or concern that a person who works with children 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 indicates 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.

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

An allegation can relate to an adult's behaviour outside work, and their relationships with others, if they:

- Have behaved in a way in their personal life that raises safeguarding concerns. These concerns do not have to directly relate to a child but could, for example, include an arrest for the possession of a weapon;
- Have, as a parent or carer, become subject to child protection procedures;
- Are closely associated with someone in their personal lives (e.g. partner, member of the family or other household member) who may present a risk of harm to child/ren for whom the adult is responsible in their employment/volunteering.

The concerns should be considered within the context of the four categories of abuse (i.e. physical, sexual and emotional abuse and neglect). These will include concerns relating to inappropriate relationships between members of staff and children or young people, for example:

- Having a sexual relationship with a child under 18 if in a position of trust in respect of that child, even if consensual. The Police, Crime, Sentencing and Courts Act 2022 has extended the definition within the Sexual Offences Act 2003 section 22A to include anyone who coaches, teaches, trains, supervises or instructs a child under 18, on a regular basis, in a sport or a religion. The "position of trust" offences are intended to target situations where the child has some dependency on the adult involved, often combined with an element of vulnerability of the child;
- 'Grooming', i.e. meeting a child under 16 with intent to commit a relevant offence (see s15 Sexual Offences Act 2003);
- Other 'grooming' behaviour giving rise to concerns of a broader child protection nature (e.g. inappropriate text / e-mail messages or images, gifts, socialising etc.);
- Possession of indecent photographs / pseudo-photographs of children.

If concerns arise about the person's behaviour in relation to their own children, the police and/or Children's Social Care must consider informing the employer / organisation in order to assess whether there may be implications for children with whom the person has contact at work / in the organisation, in which case this procedure will apply.

Allegations of historical abuse should be responded to in the same way as contemporary concerns. In such cases, it is important to find out whether the person against whom the allegation is made is still working with children and if so, to refer to the Local Authority Designated Officer. Decisions regarding informing the person's current employer or voluntary organisation should be made in consultation with the LADO.

All references in this policy to 'staff' or 'members of staff' should be interpreted as meaning all paid or unpaid staff/professionals and volunteers, including for example foster carers, approved adopters, child minders and supply staff. This policy also applies to any person who manages or facilitates access to an establishment where children are present.

2. The Difference Between an Allegation of Harm and a Concern

It might not be clear whether an incident constitutes an 'allegation'. It is important to remember that to be an allegation the alleged incident has to be sufficiently serious as to suggest that harm has or may have been caused to a child/ren or that the alleged behaviour indicates the individual may pose a risk of harm to children (or otherwise meet the criteria in Section 1).

Keeping Children Safe in Education provides this definition of a low-level concern:

> The term 'low-level' concern does not mean that it is insignificant. 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 or college 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 harm threshold or is otherwise not 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, contrary to school policy;
- Engaging with a child on a one-to-one basis in a secluded area or behind a closed door; or
- Humiliating pupils.

Incidents which fall short of the threshold could include an accusation that is made second or third hand and the facts are not clear, or the member of staff alleged to have done this was not there at the time, or there is confusion about the account.

If it is difficult to determine the level of risk associated with an incident the following should be considered:

- Was the incident a disproportionate or inappropriate response in the context of a challenging situation?
- Where the incident involved an inappropriate response to challenging behaviour, had the member of staff had training in managing this?
- Does the member of staff understand that their behaviour was inappropriate and express a wish to behave differently in the future? For example, are they willing to undergo training?
- Does the child or family want to report the incident to the police or would they prefer the matter to be dealt with by the employer?

- Have similar allegations been made against the employee – is there a pattern developing?

Keeping Children Safe in Education, Part 4, Section 2 provides that if there is any doubt as to whether the information which has been shared about a member of staff as a low-level concern in fact meets the harm threshold and thus should be treated as an allegation, the LADO should be consulted.

As good practice, agencies may wish to include the LADO in discussions as to whether the issue should be dealt with as an allegation of harm or a concern. If the decision is reached that the concern falls short of the harm threshold, there may still be a role for the LADO to provide advice and support to the employer.

Whilst the LADO will only record the details of those allegations which appear to meet the threshold for consideration set out in Section 1, the employer should record the details of any low-level concern that arises in respect of a member of their staff.

Where it is decided that the incident does not meet the threshold of harm/risk of harm and is a concern only, then the employer should take steps to ensure any conduct or behaviour issues are addressed with the member of staff through normal employment practices.

Schools should have policies and processes to deal with low-level concerns which do not meet the harm threshold and 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.

Sharing low-level concerns

Schools should ensure that their low-level concerns policy contains a procedure for sharing confidentially such concerns which is clear, easy to understand and implement. Whether all low-level concerns are shared initially with the Designated Safeguarding Lead (DSL) (or a nominated person (such as a values guardian/safeguarding champion)), or with the Headteacher is a matter for the school to decide. If the former, then the DSL should inform the Headteacher of all the low-level concerns and in a timely fashion according to the nature of each particular low-level concern. The Headteacher should be the ultimate decision-maker in respect of all low-level concerns.

Low-level concerns which are shared about supply staff and contractors should be notified to their employers so that any potential patterns of inappropriate behaviour can be identified.

Recording low-level concerns

All low-level concerns should be recorded in writing. 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.

Schools can decide where these records are kept, but they must be kept confidential, held securely and comply with the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR).

Records should be reviewed so that potential patterns of concerning, inappropriate, problematic or concerning 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 low-level concern to meeting the harm threshold, in which case it should be referred to the LADO.

It is for schools to decide how long they retain such information, but it is recommended that it is retained at least until the individual leaves their employment.

Responding to low-level concerns

The school low-level concerns policy should set out the procedure for responding to reports of low-level concerns. If the concern has been raised via a third party, the Headteacher (or a nominated deputy) should collect as much evidence as possible by speaking:

- Directly to the person who raised the concern, unless it has been raised anonymously; and
- 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. This information needs to be recorded in writing along with the rationale for their decisions and action taken.

3. Roles and Responsibilities

Working Together to Safeguard Children requires that county level and unitary local authorities ensure that allegations against people who work with children are not dealt with in isolation.

Local authorities should have a designated officer, or team of officers, to be involved in the management and oversight of allegations against people that work with children. Arrangements should be put in place to ensure that any allegations about those who work with children are passed to the designated officer, or team of officers, without delay.

Organisations and agencies working with children and families should identify a named senior officer with overall responsibility for:

- Ensuring that the organisation deals with allegations in accordance with this procedure;
- Resolving any inter-agency issues;
- Liaising with the Safeguarding Children Partnership on the subject.

Each local authority has assigned a Local Authority Designated Officer or team of Designated Officers (LADO) to:

- Receive reports about allegations and to be involved in the management and oversight of individual cases;
- Provide advice and guidance to employers and voluntary organisations and agencies;
- Liaise with the police and other agencies;
- Monitor the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process;
- Provide advice and guidance to employers in relation to making referrals to the Disclosure and Barring Service (DBS) and regulatory bodies such as Ofsted, the GMC etc.

Employers should appoint:

- A designated senior manager to whom allegations or concerns should be reported;
- A deputy to whom reports should be made in the absence of the designated senior manager or where that person is the subject of the allegation or concern.

The police detective inspector on the child abuse investigation team will:

- Have strategic oversight of the local police arrangements for managing allegations against staff and volunteers;
- Liaise with the Safeguarding Children Partnership on the issue;
- Ensure compliance with these procedures.

The police should designate a detective sergeant/s to:

- Liaise with the local authority designated officer (LADO);
- Take part in strategy meetings/discussions;
- Review the progress of cases in which there is a police investigation;
- Share information as appropriate, on completion of an investigation or related prosecution.

4. General Considerations Relating to Allegations Against Staff

4.1 Persons to be Notified

The employer must inform the Local Authority Designated Officer (LADO) within one working day when an allegation is made and prior to any further investigation taking place.

The LADO will advise the employer whether or not informing the parents of the child/ren involved will impede the disciplinary or investigative processes. Acting on this advice, if it is agreed that the information can be fully or partially shared, the employer should inform the parent/s. In some circumstances, however, the parent/s may need to be told straight away (for example, if a child is injured and requires medical treatment).

The parent/s and the child, if sufficiently mature, should be helped to understand the processes involved and should be kept informed about the progress of the case and the outcome where there is no criminal prosecution. This will include the outcome of any disciplinary process, but not the deliberations of, or the information used in, a hearing.

The employer should seek advice from the LADO, the police and/or Children's Social Care about how much information should be disclosed to the accused person.

Subject to restrictions on the information that can be shared, the employer should, as soon as possible, inform the accused person about:

- The nature of the allegation
- How enquiries will be conducted
- The possible outcome (e.g. disciplinary action, dismissal, referral to the DBS or regulatory body)

The accused member of staff should:

- Be treated fairly and honestly and helped to understand the concerns expressed and the processes involved
- Be kept informed of the progress and outcome of any investigation and the implications for any disciplinary or related process
- If suspended, be kept up to date about events in the workplace

Ofsted should be informed of any allegation or concern made against a member of staff in any day care establishment for children under 8 or against a registered child minder. They should also be invited to take part in any subsequent strategy meeting/discussion.

Children's Social Care should inform Ofsted of all allegations made against a foster carer, prospective adopter, or member of staff in a residential child care facility.

4.2 Confidentiality

Every effort should be made to maintain confidentiality and guard against publicity while an allegation is being investigated or considered. Apart from keeping the child, parents and accused person (where this would not place the child at further risk) up to date with the progress of the case, information should be restricted to those who have a need to know in order to:

- Protect children
- Facilitate enquiries
- Manage related disciplinary or suitability processes

The police should not provide identifying information to the press or media unless and until a person is charged, except in exceptional circumstances (for example, an appeal to trace a suspect). Any such circumstances should be documented and partner agencies consulted beforehand.

Section 13 of the **Education Act 2011** introduced restrictions on the publication of any information that would identify a teacher who is the subject of an allegation of misconduct that would constitute a criminal offence, where the alleged victim is a registered pupil at the school.

These restrictions remain in place unless or until the teacher is charged with a criminal offence, though the Magistrates' Court may dispense with these restrictions if it is satisfied that it is in the interests of justice to do so, having regard to the welfare of:

- The person who is the subject of the allegation; and
- The victim of the offence to which the allegation relates

There is a right of appeal to the Crown Court.

This restriction applies to allegations made against any teacher working in a school, including supply and peripatetic teachers. 'School' includes academies, Free Schools, independent schools and all maintained schools.

It is an offence to publish information in breach of these restrictions.

4.3 Support

The organisation, together with Children's Social Care and/or the police where they are involved, should consider the impact on the child concerned and provide support as appropriate. Liaison between agencies should take place to ensure the child's needs are addressed.

As soon as possible after an allegation has been received, the accused member of staff should be advised to contact their trade union or professional association. Human Resources should be consulted at the earliest opportunity so that appropriate support can be provided via occupational health or employee welfare arrangements.

4.4 Suspension

Suspension is a **neutral act** and should not be automatic. It should be considered in any case where:

- There is cause to suspect a child is at risk of significant harm; or
- The allegation warrants investigation by the police; or
- The allegation is so serious that it might be grounds for dismissal

The possible risk of harm to children should be evaluated and managed in respect of the child/ren involved and any other children in the accused member of staff's home, work or community life.

If a strategy meeting/discussion is to be held, or if Children's Social Care or the police are to make enquiries, the LADO should canvass their views on suspension and inform the employer. **Only the employer** has the power to suspend an employee and cannot be required to do so by the local authority or police.

If a suspended person is to return to work, the employer should consider what help and support might be appropriate (for example, a phased return to work or mentoring) and how best to manage the member of staff's contact with the child concerned.

4.5 Resignations and 'Compromise Agreements'

Every effort should be made to reach a conclusion in all cases even if:

- The individual refuses to cooperate, having been given a full opportunity to answer the allegation and make representations; or
- It is not possible to apply disciplinary sanctions because the person's period of notice expires before the process is complete

'Compromise' or settlement agreements must **not** be used to prevent disciplinary action or a referral to the Disclosure and Barring Service (DBS) where the criteria for referral are met. Failure to make a required referral may constitute a criminal offence.

4.6 Organised Abuse

Investigators should be alert to signs of organised or widespread abuse and/or the involvement of other perpetrators or institutions. Where applicable, cases should be dealt with under Organised and Complex Abuse Procedures, which will take precedence.

4.7 Whistleblowing

All staff should be made aware of the organisation's whistleblowing policy and feel confident to raise concerns about the attitude or actions of colleagues.

If a member of staff believes that an allegation or concern is not being dealt with appropriately, they should report the matter to the Local Authority Designated Officer (LADO).

4.8 Timescales

It is in everyone's interests for cases to be dealt with expeditiously, fairly and thoroughly, and for unnecessary delays to be avoided.

5. Initial Response to an Allegation or Concern

An allegation against a member of staff may arise from a number of sources, including a report from a child, a concern raised by another adult working in the organisation, a complaint by a parent, or concerns arising from the member of staff's behaviour outside work.

5.1 Initial Action by the Person Receiving or Identifying an Allegation or Concern

The person to whom an allegation or concern is first reported must treat the matter seriously and keep an open mind.

They must not:

- Investigate the matter or ask leading questions, even for clarification
- Make assumptions or offer alternative explanations
- Promise confidentiality; however, they should give assurance that information will only be shared on a 'need to know' basis

They must:

- Make a written record of the information as soon as possible (where appropriate, using the child's or adult's own words), including:
    - Time, date and place of the incident(s)
    - Who was present
    - What was said or observed
- Sign and date the written record
- Immediately report the matter to the designated senior manager, or to the deputy in their absence
- Where the designated senior manager is the subject of the allegation, report the matter to the deputy or other appropriate senior manager

Failure to follow these steps may place children at risk and could compromise any subsequent investigation.

5.2 Initial Action by the Designated Senior Manager

When informed of a concern or allegation, the designated senior manager must **not** investigate the matter or interview the member of staff, the child concerned, or any potential witnesses.

The designated senior manager should:

- Obtain written details of the concern or allegation, signed and dated by the person receiving the information (not the child or adult making the allegation)
- Approve and date the written record
- Record any information about:
    - Times, dates and locations of alleged incident(s)
    - Names of any potential witnesses
- Record all discussions, decisions made, and the **rationale** for those decisions

The designated senior manager must report the allegation to the Local Authority Designated Officer (LADO) and discuss the decision in relation to the agreed threshold criteria set out in Section 1: Introduction and Criteria, within one working day.

Referrals must not be delayed in order to gather further information. A failure to report an allegation or concern in accordance with these procedures may itself be treated as a disciplinary matter.

Where an allegation requires immediate attention but is received outside normal office hours, the designated senior manager should consult the Children's Social Care emergency duty team or the police, and inform the LADO as soon as possible.

If a police officer receives an allegation, they should, without delay, report it to the designated detective sergeant on the Child Abuse Investigation Team (CAIT), who must then immediately inform the LADO.

Similarly, any allegation made directly to Children's Social Care must be immediately reported to the LADO.

5.3 Initial Consideration by the Designated Senior Manager and the LADO

There are up to three strands in the consideration of an allegation:

- A police investigation of a possible criminal offence
- Children's Social Care enquiries and/or assessment about whether a child is in need of protection or services
- Consideration by the employer of disciplinary action

The LADO and the designated senior manager should first consider whether:

- Further details are required; and
- There is clear evidence or information which establishes that the allegation is false

Care must be taken to ensure that children are not confused as to dates, times, locations or the identity of the member of staff involved.

Where the allegation is not demonstrably false and there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, the LADO should refer the matter to Children's Social Care and request that an immediate strategy meeting/discussion **is** convened.

Where a child is not believed to have suffered, or to be likely to suffer, significant harm, but a police investigation is continuing, the LADO should conduct an **evaluation discussion** with the police, the designated senior manager and any other relevant agencies to evaluate the allegation and determine how it should be dealt with.

This evaluation discussion should take place within one working day and must consider:

- How matters should proceed in a criminal process alongside a disciplinary process; or
- Whether disciplinary action should await the completion of police enquiries and/or prosecution

The progress of the investigation should be reviewed by the police no later than four weeks after the initial evaluation discussion, and thereafter at fortnightly or monthly intervals**,** depending on complexity.

5.4 Strategy Meeting/Discussion

Wherever possible, a strategy meeting/discussion (also referred to as a Position of Trust (PoT) or Evaluation Meeting) should take the form of a meeting. In some circumstances, a telephone discussion may be justified.

Possible participants include:

- Local Authority Designated Officer (LADO)
- Social Care manager (to chair if a strategy meeting)
- Relevant social worker and their manager
- Detective Sergeant
- Designated or named Safeguarding Children Health Professional (ICB)
- Consultant paediatrician
- Designated senior manager for the employer
- Human Resources representative
- Legal adviser where appropriate
- Senior representative of the employment agency or voluntary organisation (if applicable)
- Fostering service manager / supervising social worker (where relevant)
- Regulatory or inspection body (e.g. Ofsted, CQC, GMC)
- Representatives from another authority where the child is placed or resident
- Complaints officer (if the concern arose from a complaint)

The meeting/discussion should:

- Decide whether there should be a Section 47 enquiry and/or police investigation
- Consider whether a parallel disciplinary process can take place
- Consider the allegation in the context of any previous concerns
- Plan enquiries, allocate tasks and set timescales
- Decide what information can be shared, with whom and when
- Consider protection and support for all affected children
- Consider support for the member of staff
- Make recommendations regarding suspension or alternatives
- Identify a lead contact manager in each agency
- Agree review arrangements and monitoring by the LADO
- Consider referrals to the DBS or regulatory bodies
- Agree dates for further meetings

A final strategy/PoT meeting should be held to ensure all actions are completed and to identify any learning points.

6. Disciplinary Process

6.1 Disciplinary or Suitability Process and Investigations

The LADO and employer should discuss whether disciplinary action is appropriate where:

- It is clear at the outset, or decided by a strategy meeting, that police or Children's Social Care enquiries are not required; or
- The employer or LADO is informed that a criminal investigation is complete, closed without charge, or prosecution discontinued

The discussion should consider:

- Information provided by police and/or Children's Social Care
- The outcome of any investigation or trial
- The different standards of proof in criminal and disciplinary proceedings

Where disciplinary action is not required, appropriate action should be taken within three working days.

7. Record Keeping and Monitoring Progress

7.1 Record Keeping

Employers should keep a clear and comprehensive summary of the case on the individual's confidential personnel file and provide a copy to the individual. Records should be retained until normal retirement age or for **ten years**, whichever is longer.

Details of malicious allegations should be removed from personnel records.

7.2 Monitoring Progress

The LADO should monitor and record the progress of each case, either fortnightly or monthly depending on complexity, through review meetings or liaison with agencies. Reasons for delays should be recorded.

8. Unsubstantiated and False Allegations

Where it is concluded that there is insufficient evidence to substantiate an allegation, a report should be provided to the employer to enable consideration of further action.

9. Substantiated Allegations and Referral to the DBS

9.1 Substantiated Allegations

If an allegation is substantiated and the person is dismissed or the employer ceases to use the person's service or the person resigns or otherwise ceases to provide their services, the LADO should discuss with the employer whether a referral should be made to the Disclosure and Barring Service (DBS).

9.2 Bodies with a legal duty to refer

The following groups have a legal duty to refer information to the DBS:

- Regulated Activity suppliers (employers and volunteer managers);
- Personnel suppliers;
- Groups with a power to refer.

9.3 Bodies with the power to refer

The following groups have the power to refer information to the DBS:

- Local authorities (safeguarding role);
- Health and Social care (HSC) trusts (NI);
- Education and Library Boards;
- Keepers of registers e.g. General Medical Council, Nursing and Midwifery Council;
- Supervisory authorities e.g. Care Quality Commission, Ofsted.

If the person being referred to the DBS is a teacher in England they should also be referred to the Teaching Regulation Agency.

10. Learning Lessons

The employer and the LADO should review the circumstances of the case to determine whether there are any improvements to be made to the organisation's procedures or practice.

11. Procedures in Specific Organisations for Reporting Allegations

Where organisations do have specific procedures, they should be compatible with these procedures and additionally provide the contact details for:

- All allegations should be reported to the Head
- All allegations should be reported to the Headteacher. Where the Headteacher is absent, or where the Headteacher is the subject of the allegation, concerns should be reported to the Chair of Governors, who will inform the CEO
- The LADO - lado@warwickshire.gov.uk Tel: 01926414144

This information is available to all staff and volunteers on the safeguarding notice board in each school's staff room.

12. Further Information

- Keeping Children Safe in Education (current statutory guidance)