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Managing Allegations against Staff Policy

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1 Introduction

This policy has been written to comply with the DFE Statutory Guidance on Keeping Children Safe in Education as published in 2022. It will be used when managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity.

1.1 Scope

This procedure applies to all staff, whether teaching, administrative, management or support, as well as to volunteers. It also applies to the Headteacher and Governing Body who may not be employees of the School. The word “staff” is used for ease of description.

It should be used in respect of all cases in which it is alleged that a member of staff 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; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

This policy relates to members of staff who are currently working at the School, regardless of whether the School is where the alleged abuse took place. Allegations against a member of staff who is no longer working at the School should be referred to the police.

1.2 Equality Statement

This policy applies equally to all staff regardless of their age, disability, sex, race, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage or civil partnership. Care will be taken to ensure that no traditionally excluded groups are adversely impacted in implementing this policy. Monitoring will take place to ensure compliance and fairness.

1.3 Principles

Employers have a duty of care to their employees. They should ensure they provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended. It is essential that any allegation of abuse made against a member of staff or volunteer at the 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.

1.4 Definitions

Within this policy the following roles have been abbreviated:

LADO – Local Authority Designated Officer

DSL – Designated Safeguarding Lead

HT - Headteacher

1.5 Initial considerations

The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may well either not meet the criteria set out in the introduction above, or may do so without warranting consideration of either a police investigation or enquiries by Local Authority children’s social care services. In these cases, an internal investigation and where appropriate, staff disciplinary procedures should be followed to resolve cases without delay. For all allegations that do meet the criteria above, the Local Authority Designated Officer (LADO) must be informed.

The following definitions should be used when determining the outcome of allegation investigations:

- **Substantiated:** there is sufficient evidence to prove the allegation;
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **False:** there is sufficient evidence to disprove the allegation;
- **Unsubstantiated:** there is insufficient evidence to either to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- **Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made.

2 Receiving an allegation

A member of staff who receives an allegation about another member of staff from a child should follow the same guidelines as for any safeguarding concern about a child/young person. These are to:

- Listen carefully to what the young person has to say and take it seriously.
- Never investigate or take sole responsibility for a situation where a child/young person makes a disclosure.
- Never make assumptions or offer alternative explanations.
- Always explain to children and young people that any information they have given will have to be shared with others but give assurance that the information will only be shared on a 'need to know' basis..
- Ensure that a written statement is completed including the date and the signature of the member of staff receiving the disclosure/reporting the concern.
- Respect confidentiality and file documents securely.

In addition, a member of staff receiving an allegation must:

- Ensure that the child is safe and away from the person against whom the allegation is made.
- Report the allegation immediately to the Headteacher unless this is the person against whom the allegation is made, in which case the report should be made to the Chair of Governors..

2.1 Whistle-blowing

All staff at the school will be made aware of the School's Whistleblowing policy and feel confident to voice concerns about the attitude or actions of colleagues. If a member of staff believes that a reported allegation or concern is not being dealt with appropriately by their organisation, they should report the matter to the LADO.

2.2 Referral to the LADO

In the first instance, the Senior Designated Safeguarding Lead (DSL)/ Headteacher (HT) should immediately discuss the allegation with the LADO. The LADO and the HT/DSL will consider the nature, content and context of the allegation and agree a course of action. There may be situations when the DSL/HT will want to involve the police immediately, for example if the person is deemed to be an immediate risk to children or there is evidence of a possible criminal offence. Where there is no such evidence, the DSL /HT should discuss the allegations with the LADO in order to help determine whether police involvement is necessary.

The initial sharing of information and evaluation may lead to a decision that no further action is to be taken in regard to the individual facing the allegation or concern; in which case this decision and a justification for it should be recorded by both the DSL and the LADO, and agreement reached on what information should be put in writing to the

individual concerned and by whom. The DSL should then consider with the LADO what action should follow both in respect of the individual and those who made the initial allegation.

The DSL/HT should inform the accused person about the allegation as soon as possible after consulting the LADO. It is extremely important that the DSL/HT provides them with as much information as possible at that time. However, where a strategy discussion is needed, or police or children's social care services need to be involved, the case manager should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused.

The Headteacher / Governing Body must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children at the school or whether alternative arrangements can be put in place until the allegation or concern is resolved. All options to avoid suspension should be considered prior to taking that step.

If there is cause to suspect a child is suffering or is likely to suffer significant harm, a strategy discussion should be convened in accordance with *Working Together to Safeguard Children*. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that teachers and other staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.

In some cases, an allegation of abuse against someone closely associated with a member of staff (e.g. partner, member of the family or other household member) may be made. Where this presents a risk of harm to child/ren for whom the member of staff is responsible, a strategy meeting / discussion is likely to be convened to consider:

- the ability and/or willingness of the member of staff to adequately protect the child/ren;
- Whether measures need to be put in place to ensure their protection;
- Whether the role of the member of staff is compromised.

Where it is clear that an investigation by the police or children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the LADO should discuss the next steps with the DSL / HT. In those circumstances, the options open to the School depend on the nature and circumstances of the allegation and the evidence and information available. This will range from taking no further action to dismissal. Where appropriate, staff disciplinary procedures will be followed.

In some cases, further enquiries will be needed to enable a decision about how to proceed. If so, the LADO should discuss with the DSL/HT how and by whom the investigation will be undertaken. In straightforward cases, the investigation should normally be undertaken by a senior member of staff.

3 Suspension

Suspension should not be an automatic response when an allegation is reported; all options to avoid suspension should be considered prior to taking that step. However, suspension is a neutral act and 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. Where this is Torbay Council, Human Resources should also be informed. Only the School, however, has the power to suspend an accused employee and they cannot be required to do so by the local authority or police. Schools are advised to discuss possible suspension with Human Resources to determine the appropriate course of action.

In cases where the HT/ GB is made aware that the Secretary of State has made an interim prohibition order in respect of an individual at the School, it will be necessary to immediately suspend that person from duty pending the findings of the NCTL's investigation.

The HT/GB should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can be resolved quickly and without the need for suspension.

The HT/GB should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended.

If immediate suspension is considered necessary, the rationale and justification for such a course of action should be agreed and recorded by both the HT and the LADO. This should also include what alternatives to suspension have been considered and why they were rejected.

Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched 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 as to who their named contact is within the organisation and provided with their contact details.

Where a strategy discussion or initial evaluation concludes that there should be enquiries by the children's social care services and/or an investigation by the police, the LADO should canvass police and children's social care services for views about whether the accused member of staff needs to 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 an assessment as to the possible risks.

3.1 Information sharing

In a strategy discussion or the initial evaluation of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.

Where the police are involved, wherever possible the School should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process.

4 Confidentiality

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

Section 13 of the Education Act 2011 introduced restrictions implemented in September 2012 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 of the offence is a registered pupil at the school.

Such restrictions remain in place unless or until the teacher is charged with a criminal offence, though they may be dispensed with on the application to the Magistrates' Court by any person, if the court 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 will apply to allegations made against any teacher who works at a school, including supply and peripatetic teachers. 'School' includes academies, Free Schools, independent schools and all types of maintained schools. There is a new offence of publishing any information in breach of these restrictions. "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.

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 would like 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).

The DSL/HT should take advice from the LADO, police and children's social care services to agree the following:

- who needs to know and, importantly, exactly what information can be shared;
- how to manage speculation, leaks and gossip;
- what, if any information can be reasonably given to the wider community to reduce speculation;
- how to manage press interest if and when it should arise.

5 Supporting those involved

5.1 Employees

Employers have a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations process. Support for the individual is vital to fulfilling this duty. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the children's social care services or the police. The individual should be advised to contact their trade union representative, if they have one, or a colleague for support. They should also be given access to counselling or medical advice where this is possible.

The HT should appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and current work-related issues. Social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

5.2 Parents or carers

Parents or carers of a child or children involved should be told about the allegation as soon as possible if they do not already know of it. However, where a strategy discussion is required, or police or children's social care services need to be involved, DSL/HT should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents or carers. Parents or carers should also be kept informed about the progress of the case, and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process. The deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but the parents or carers of the child should be told the outcome in confidence.

5.3 Child or young person

In cases where a child may have suffered significant harm, or there may be a criminal prosecution, children's social care services, or the police as appropriate, should consider what support the child or children involved may need.

6 Managing the situation and exit arrangements

6.1 Disciplinary Action

The LADO, DSL / Headteacher and Human Resources should discuss whether disciplinary action is appropriate in all cases where:

- It is clear at the outset or decided by a strategy meeting / discussion that a police investigation or LA children's social care enquiry is not necessary; or
- The employer or LADO is informed by the police or the Crown Prosecution Service that a criminal investigation and any subsequent trial is complete, or
- that an investigation is to be closed without charge, or a prosecution discontinued.

The discussion should consider any potential misconduct or gross misconduct on the part of the member of staff, and take into account:

- Information provided by the police and / or Children's social care;
- The result of any investigation or trial;
- The different standard of proof in disciplinary and criminal proceedings.

Where Disciplinary action is necessary, the School will follow its Disciplinary Policy. In the case of supply, contract and volunteer workers, normal disciplinary procedures may not apply. In these circumstances, the LADO will discuss with the person's employer (in the case of Agency or contract staff) or the School (in the case of Volunteers) as to whether to continue to use the person's services, or provide future work with children, and if not, whether to make a report for consideration of barring or other action.

6.2 Timescales

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. Target timescales: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation.,

For those cases where it is clear immediately that the allegation is unsubstantiated or malicious, they should be resolved within one week.

Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the employer to deal with it in line with staff disciplinary procedures, although if there are concerns about child protection, the HT /DSL should discuss them with the LADO. In such cases, if the nature of the allegation does not require formal disciplinary action, the School should institute appropriate action within three working days. If a disciplinary hearing is required the investigation should commence without delay and seek to be completed within 15 working days.

6.3 Oversight and monitoring

The LADO has overall responsibility for oversight of the procedures for dealing with allegations; for resolving any inter-agency issues; and for liaison with the Local Safeguarding Children Board (LSCB) on the subject. The LADO will provide advice and guidance to the School, in addition to liaising with the police and other agencies, and monitoring the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals, depending on the complexity of the case.

6.4 Resignations and ‘settlement/compromise agreements’

If the accused person resigns, or ceases to provide their services, this should not prevent an allegation being followed up in accordance with this guidance. **A referral to the Disclosure and Barring Service (DBS) must be made, if the criteria are met.** If the accused person resigns or their services cease to be used and the criteria are met it will not be appropriate to reach a settlement/compromise agreement.

It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process. Wherever possible the accused should be given a 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 on the basis of all the information available, should continue even if that cannot be done or the accused does not cooperate.

So-called ‘settlement/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 in cases of refusal to cooperate or resignation before the person’s notice period expires. Such an agreement will not prevent a thorough police investigation where that is appropriate.

6.5 Record keeping

Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy provided to the person concerned.

The purpose of the record is to:

- Enable accurate information to be given in response to any future request for a reference, where appropriate.
- Provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction.
- Help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

Schools and colleges have an obligation to preserve records which contain information about allegations of sexual abuse for the Independent Inquiry into Child Sexual Abuse (IICSA), for the term of the inquiry (further information can be found on the [IICSA website](#)). All other records should be retained at least until the accused has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

6.6 References

Cases in which an allegation was proven to be false, unsubstantiated or malicious should not be included in employer references. A history of repeated concerns or allegations which have all been found to be false, unsubstantiated or malicious should also not be included in any reference.

7 Specific actions

7.1 Following a criminal investigation or a prosecution:

The police should inform the employer and LADO immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances the LADO should discuss with the 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 children's social care services should inform that decision.

7.2 On conclusion of a case:

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 his or her services, the LADO should discuss with the HT/GB and their Human Resources adviser whether the school will decide to make a referral to the DBS for consideration of whether 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) to consider prohibiting the individual from teaching.

There is a legal requirement for employers to make a referral to the DBS where they think that 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.

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the HT/GB should consider how best to facilitate that. 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 DSL /HT 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 a pupil at the School.

7.3 In respect of malicious or unsubstantiated allegations

If an allegation is determined to be unsubstantiated or malicious, the LADO should refer the matter to the children's social care services to determine whether the child concerned is in need of services, or may have been abused by someone else. If an allegation is shown to be deliberately invented or malicious, the Headteacher should consider whether any disciplinary action is appropriate against the pupil who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible, even if he or she was not a pupil.

7.4 Learning lessons

At the conclusion of a case in which an allegation *is* substantiated, the LADO should review the circumstances of the case with the HT / DSL to determine whether there are any improvements to be made to the School's procedures or

practice to help prevent similar events in the future. This should include issues arising from the 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 HT/DSL should consider how future investigations of a similar nature could be carried out without suspending the individual.

8 Policy Feedback

Should you have any comments regarding this policy, please address them to the HR Policy mailbox –

HRpolicy@torbay.gov.uk

8.1 History of Policy Changes

Date	Page	Details of Change	Agreed by:
Sep 2017	All	New policy iteration	
April 2019		Updates from Keeping Children Safe in Education	

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