



# **Notting Hill Preparatory School**

## **4.3 Policy for Managing Allegations Against Staff**

**(EYFS & KS1-3)**

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| Reviewed by:          | <b>SK NB</b> | Date of next review: | <b>01/21</b> |

## Policy for Managing Allegations Against Staff

### Introduction

The core belief of Notting Hill Prep School is that children should feel happy and secure at school. The staff aim to cultivate an environment where there are no barriers to this happening.

However, it is always better for a school to anticipate possible risks and to seek to prevent all reasonable risk of misunderstandings and false allegations. Proper policy and procedures are also likely to deter any individual seeking to use the school as a basis for inappropriate relationships with pupils. The **NHP Code of Conduct for Staff** provides a clear set of guidelines as to what type of behaviour promotes such an environment and what type of behaviour is generally considered to be inconsistent with professional status.

However, concerns, complaints and allegations may arise, and before the school embarks on any investigative procedure against a member of staff, these three terms need to be strictly defined.

### Concern, Complaint or Allegation?

**(For further information, see Policy for Complaints)**

A concern may be defined as an expression of worry or doubt over an issue considered to be important for which reassurances are sought.

A complaint is an expression of dissatisfaction, however made, about actions or a lack of action. It may be made about the school as a whole, about a specific department or about an individual member of staff, and any matter about which a parent is unhappy and seeks action by the school is within the scope of a complaint. A complaint is likely to arise if a parent believes that the school has done something wrong, failed to do something that it should have done or has acted unfairly.

An allegation is made against an individual, that is, where there is an imputation of harm done to a child by a member of staff.

The procedure we follow in each case - concern, complaint or allegation - will be defined by the substance of what is reported to us by the parent(s) in a particular instance. That is, objectively, without reference to how the parents wish us to proceed or any other personal considerations. If we are in any doubt as to whether we should follow complaint or allegation procedure, we will consult the LADO (see below).

### Procedure

The process described in this document is intended for use with all staff including volunteers and supply staff. In this procedure, the term “parents” means all those having parental responsibility for a child.

### Legal context

**All actions described in this policy are in accordance with the most recent DfE guidance: these procedures follow the guidance laid down in Part 4 of KCSIE September 2019.** These procedures indicate how to manage cases of allegations that might indicate a person has harmed, or 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.

**Appendix 1** of this policy outlines actions that could constitute abuse by a member of staff. Infringements would be subject to disciplinary procedures as appropriate. All staff should be aware of the school's policy on **Use of Force to Control or Restrain Pupils**.

### **Allegations against Staff - process**

The school recognises that any such allegation is serious and needs to be dealt with in a sensitive, efficient manner. It is also important that those with responsibilities described in this procedure act without delay. All parties involved are likely to be distressed. Any disruption to the normal running of the School should be minimised.

### **Safeguards for staff**

It must be remembered that, although our first duty is to ensure a safe environment for the children, the school also has a duty of care to its employees.

If an allegation is made against any member of staff or volunteer it will be dealt with very quickly and in a fair and consistent way that provides effective protection for the child, while at the same time supporting the person who is the subject of the allegation.

The school will ensure that effective support is provided for anyone facing an allegation and provide the employee with a named contact if they are suspended.

There is an obvious need to act immediately and with utmost discretion. At any stage of consideration or investigation, all unnecessary delays should be eradicated.

The informant should be told that the matter will be referred in confidence to the appropriate people.

The school must not undertake its own investigations of allegations without prior consultation with the local authority designated officer (LADO) - or in the most serious cases, the police - so as not to jeopardise statutory investigations. In borderline cases, discussions with the LADO can be held informally and without naming the school or individual.

Whenever the person is interviewed as part of an investigation, he or she is entitled to choose a representative to act as a witness to the proceedings.

- **The allegations management procedures laid down in this policy should be followed in all cases if it is alleged that a member of staff or volunteer 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

Any allegation which involves the possibility of physical, emotional or sexual abuse or neglect by a member of staff or volunteer will **always** be discussed with the Local Authority Designated Officer (LADO) and their advice taken. If the matter is a child protection concern, an investigation will be carried out by Children's Social Care and the Police, as happens with any other referral.

The Designated Safeguarding Lead, the Head and Governors **must not** carry out investigations themselves in these circumstances. They will be invited to a Strategy Meeting at a very early stage (see below).

When deciding whether to make a referral following an allegation or suspicion of abuse, the Head and Designated Safeguarding Lead will not make their own decision over what appear to be borderline cases, but rather the doubts and concerns will be discussed with the LADO. This will be done tentatively and without giving names in the first instance. What appears minor at first can later be revealed to be much more serious and an allegation of child abuse or neglect may lead to a criminal investigation. Thus, the school will not do anything that may jeopardise a police investigation such as asking a child leading questions or attempting to investigate the allegations of abuse.

Decisions about suspension and the use of disciplinary procedures are for the Head and Governing Body alone, but action may need to be co-ordinated where there is a wider investigation involving Children's Social Care and/or the Police and where for example, bail conditions may apply.

**All allegations should be reported to the Head. In cases where the Head is the subject of the allegation or concern the report should be made in writing directly to the Chair of Governors c/o Notting Hill Prep and marked 'private and confidential', without the Head being informed.**

#### **Responsibilities of the Head/Chair of Governors (or nominated substitute)**

**Once an allegation has been made, the Head (or, if the allegation has been made against the Head, the Chair of the School's Governing Body or in their absence, a nominated governor) will:**

- check that the allegation is not demonstrably false (e.g. member of staff not in school on day of alleged incident) although noting at the same time that a referral to children's social care as 'child in need' may be appropriate if you believe a child informant is at risk or to the police if the allegation is proved to have been deliberately invented by a child
- make immediate contact (within 1 day) with the LADO to discuss the allegation, consider the nature, content and context of the allegation and agree a course of action including any involvement of the police. Discussions should be recorded in writing
- if the LADO is not available to speak/fails to respond when an allegation is referred, the person making the referral should explore other options, rather than delay reporting. For example, by seeking out another person at Children's Social Care or contacting the Tri-Borough Mash
- inform the person making the allegation of the action taken and ensure they realise that the person against whom the allegation has been made will have a right to know the substance of the allegation if disciplinary or legal action is to be taken
- as soon as possible after consulting with the LADO, inform **directly** the person about whom the allegation has been made (in accordance with any restrictions or information about sharing that may be imposed by the police or Children's Social Care)
- keep clear and comprehensive written notes about the allegation, including actions taken and

decisions reached. These records must be kept in the member of staff's confidential personnel file and a copy given to the person concerned. The school will provide information regarding an allegation as appropriate for the purposes of future references and DBS disclosures

- help all parties concerned to understand the process throughout
- get written records of the allegation, signed and dated by the person reporting it, which are countersigned and dated by the Head
- collate information and relevant details about the child concerned, the person against whom the allegation has been made, any witnesses

**The Head will note that informing parents/carers of the child concerned must only be done following the consultation with the LADO**

### **The role of the Safeguarding Governor**

The role of the Safeguarding Governor and time of referral to them, if required:

When the Head - or in the case where the allegation is made against the Head, the Chair of Governors or their nominated substitute, refers an allegation to the LADO - there is no requirement at that stage for them to inform the school's Safeguarding Governor (the logic being that the school's Safeguarding Governor is responsible for pupil welfare not disciplinary matters relating to staff).

However, should the allegation contain a clear implication that a child has suffered, or is currently suffering harm, that is in scenarios where the Safeguarding Governor should customarily be informed in order for them to discharge their duties of child protection, the Head or Chair of Governors may inform them as soon as they have referred the allegation to the LADO.

In either scenario, the Head or Chair/their nominated substitute should check with the LADO at the time of referral about the appropriate time to involve the Safeguarding Governor.

### **Interactions with the LADO and LADO responsibilities**

- If the LADO concludes that an investigation is called for, it is their responsibility to arrange a strategy meeting to discuss how the next steps are handled
- The arrangements agreed upon in the strategy meeting will include informing the parents and seeking their consent for any immediate medical examination
- The strategy meeting will decide when the member of staff against whom the allegation has been made should be informed
- No discussion should take place about the allegation without the permission of the LADO
- The staff member against whom the allegation is made would normally be informed as soon as possible after the initial strategy meeting (or as a result of an initial discussion with the LADO)

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- If, at the strategy meeting, it is established that the allegation is not criminal but is still of concern, it will be agreed what further action, if any, needs to be taken
  - At the conclusion of the investigation, if criminal proceedings do not ensue, there is a range of possible sanctions available to the school including, where the circumstances warrant it, dismissal
  - These decisions will be taken by the school in conjunction with the school's legal advisers and governors
  - Details of all investigations and outcomes will be carefully recorded and securely stored in staff personnel files
  - The strategy meeting will also recommend to the employer whether the member of staff can remain on the school site or not, pending further investigation
  - It is the school's decision alone whether suspension or leave of absence is implemented, but the school will give due weight to the views of the LADO and the police when making a decision about suspension
  - If the allegation is against a member of staff, and the police/Children's Social Care decide to take the case further, it is reasonable to ask the police to give some indication of their timescales; the LADO can also advise in terms of process
  - If the allegation against a member of staff has been substantiated, the school should work with the LADO 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

There is understandable concern amongst many teachers that careers may be irreparably damaged by flimsy or malicious allegations by children. This is actually extremely rare, though some incidents do end up only as "unproven" one way or the other which is generally unsatisfactory. Pupils found to have made a malicious allegation are likely to receive a school sanction which could include exclusion.

### **Confidentiality**

From 1st October 2012, restrictions have been implemented on the reporting or publishing of allegations against teachers. To this end, it is extremely important that if an allegation is made, the school makes every effort to maintain confidentiality and guard against unwanted publicity while the allegation is being investigated or considered. These restrictions apply up to the point where the accused person is charged with an offence, or the DfE/NCTL publishes information about an investigation or decision in a disciplinary case.

## Support

The process of dealing with an allegation against staff can be daunting for the child and/or family involved. Where the allegation is unfounded or even false there may also be underlying reasons for the allegation being made. It is important that the child's needs are identified and the appropriate support obtained for the child and, where necessary, the family.

An allegation can be traumatic for the accused member of staff too, particularly when the allegation is false. NHP recognises it has a duty of care to its staff and should ensure that appropriate support is offered. The member of staff should also be advised to seek the advice of their union or professional association.

Concerns may be raised by colleagues who have witnessed behaviour that they consider in good faith to be abusive or inappropriate. It is important to enable staff to disclose their views without fear of retribution, even if the concerns are subsequently unsubstantiated. Such staff should be supported in accordance with our whistle blowing procedure outlined in the **Staff Employment Manual and Code of Conduct** and **Policy on Whistle Blowing**.

## Record keeping

Details of allegations that are found to be 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 record should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

This information may need to be sent to the DBS in the case of an allegation that has been referred to the police but did not result in a criminal investigation or conviction.

## Defined outcomes

The following definitions may be used when determining and defining the outcome of allegation investigations:

- **Substantiated** – there is sufficient evidence to prove the allegation
- **Malicious** – means there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive; ***details of allegations that are found to be malicious should be removed from personnel records***
- **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

**If the allegation is found not to be substantially false or unfounded**, it will usually be the case that the RBKC Local Safeguarding Children Partnership will action a strategy discussion for the protection of the child concerned or will contact the police for further investigation.

If the child is not likely to suffer significant harm or be at risk of significant harm, but a criminal offence has been committed, the police will be informed directly.

### Other considerations / actions:

#### 1. If an external referral is decided

- The Head should prepare – as a contingency - a standard response to queries by parents and the media. The response should indicate that:
  1. The matter is governed by procedures which the Head is obliged to follow
  2. The matter is in the hands of the appropriate agencies and no further comment can be made
  3. No names can be given for use in the public domain
- When inter-agency discussions take place, it is essential that the Head or a substitute attends
- When the appropriate agencies have completed their procedures, the Head may decide that an internal investigation should be carried out to establish whether or not the School's Disciplinary Procedure should be invoked. Any disciplinary investigation conducted by the School must follow the School's Disciplinary Procedure. Interviews with children should be kept to a minimum

#### 2. If an external referral is not made

- An internal investigation should be carried out to establish the circumstances. If the Head decides that disciplinary action may be appropriate, the School's Disciplinary Procedure should be invoked. Any disciplinary investigation conducted by the School must follow the School's Disciplinary Procedure as set out in the **School's Employment Manual**. Interviews with children should be kept to a minimum.

#### 3. Suspension of Staff

- Suspension should not automatically follow an allegation. The school may, at its discretion, require a member of staff to take time off work pending an investigation. Suspension may, however, be an appropriate step at any stage, depending on the information available. Suspension is a neutral action and does not constitute a disciplinary penalty
- The decision on suspension is for the Head to take. Where external agencies are involved, any decision on suspension should be made after consultation with them. Factors such as the seriousness of the allegation, the perceived risk to children, the existence or otherwise of previous complaints and the possible conduct of the investigation may be relevant
- Staff who are suspended should be provided with a named point of contact in the School. They should also be advised to contact their teacher association, trade union or other professional body
- Parents/guardians of the child concerned will be told about the case, if they do not already know, and will be kept informed of its progress, including its outcome (in accordance with advice from the LADO and the police), but **will not be told any details of the disciplinary process**
- Staff who are suspended or who are required to take time off work, must not contact parents, pupils or staff during this period

#### 4. Allegations which are found to be false

- If the allegation is found to be false, and the person has been suspended, then the school will support him or her as best it can, to return to work, and will attempt to minimise contact with the pupil(s) involved in making the allegation if they remain at the school. The school will consider serious disciplinary action against a child who is found to have made deliberately false allegations



## 5. Allegations which are substantiated

- If the allegation is substantiated, the course of action to be taken by the school is agreed with the LADO and the school's legal advisors. If appropriate, disciplinary proceedings would follow which could result in dismissal. A criminal offence, regardless of significant harm to a child, would be considered as gross misconduct and will result in dismissal
- The school will report the dismissal of any member of staff following a substantiated allegation, whether employed, contracted or a volunteer, **within one month of the person's leaving**

### Further actions

**It is a legal requirement for the school 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. (See Paras 163-4 & 217; KCSIE September 2019)**

It is a legal requirement for the school to notify the DfE and DBS (see below for contact details) within one month if the services of a person are discontinued because he/she was considered unsuitable for work with children and the circumstances of the case meet the DBS criteria for referral – therefore, when an allegation has been substantiated.

The following can constitute 'services of a person discontinued':

- Dismissal
- Non-renewal of a fixed-term contract
- No longer engaging/refusing to engage a supply teacher provided by an employment agency
- Terminating the placement of a student teacher or other trainee
- No longer using staff employed by contractors/no longer using volunteers
- Resignation
- Voluntary withdrawal from supply teaching
- Contract working, a course of initial teacher training, or volunteering

(See also **Appendix 3**: referrals in cases of resignation or compromise/settlement agreements)

### **Failure to make a report when required constitutes an offence.**

It is important that reports include as much evidence about the circumstances of the case as possible. 'Compromise agreements' cannot be used to prevent a referral being made to the DBS when it is legally required nor can an individual's refusal to cooperate with an investigation. The school has a legal duty to respond to requests from the DBS for information they hold already, but does not have to find it from other sources.

Where a referral has been made to the DBS, it is not necessary for a referral also to be made to the National College for Teaching and Leadership (NCTL), as information is shared between the two bodies.

Where a dismissal does **not** reach the threshold for DBS referral, separate consideration should be given to an NCTL referral where a teacher has been dismissed (*or would have been dismissed if he/she had not resigned*) and a prohibition order may be appropriate.

The reasons such an order would be considered are:

- "unacceptable professional conduct"

- “conduct that may bring the profession into disrepute” or
- a “conviction, at any time, for a relevant offence”

Further guidance is published on the NCTL website:

<https://www.gov.uk/government/organisations/national-college-for-teaching-and-leadership>

The Disclosure and Barring Service  
PO Box 181, Darlington DL1 9FA

Telephone number for DBS referrals and safeguarding matters: 03000 200 190

## **6. Review of procedures**

- A review of procedures will take place after any allegation is made, regardless of whether the allegation is substantiated or not.

## **Allegations and Inspection**

The school will be asked, as part of a routine inspection, to confirm that it has disclosed to inspectors all instances of action in relation to safeguarding concerns which would include an allegation should one have arisen and proven not to be manifestly false.

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

- Resignations and ‘settlement arrangements’
- Record keeping
- References
- Timescales
- Oversight and monitoring
- Suspension
- Information sharing

## **Specific actions:**

- Following a criminal investigation or a prosecution
- On conclusion of a case
- In respect of malicious or unsubstantiated allegations
- Learning lessons

## **Managing exit arrangements**

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

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. But 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. 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 a conclusion wherever possible.

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 DBS *must* be made, if the criteria are met:**

- The person concerned has harmed, or poses a risk of harm to, a child or vulnerable adult
- Where the harm test is satisfied in respect of that individual
- Where the individual has received a caution or conviction for a relevant offence, or if there is reason to believe that individual has committed a listed relevant offence; and that individual has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left (**KCSIE September 2019**)

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.

'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 in cases of refusal to cooperate or resignation before the person's notice period expires.

A settlement/compromise agreement which prevents the school from making a DBS referral when the criteria are met would likely result in a criminal offence being committed as the school would not be complying with its legal duty to make the referral.

Such an agreement will additionally not prevent a thorough police investigation where that is appropriate. Furthermore, and as with resignations (above), no settlement agreement will ever vitiate the Head's legal obligation to refer an allegation to the LADO or prevent an allegation from being investigated.

### **Record keeping**

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

The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

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**

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

**Timescales**

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. Target timescales are shown below: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. It is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months.

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

Where the initial consideration decides that the allegation does not involve a possible criminal offence, it may be for the employer to deal with it subsequently, although the employer should discuss the matter with the LADO and agree next steps before proceeding to further action.

In such cases, if the nature of the allegation does not require formal disciplinary action, the employer should institute appropriate action within three working days, any action being subject to the advice of the LADO. If a disciplinary hearing is required and can be held without further investigation, the hearing should be held within 15 working days.

**Oversight and monitoring**

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

If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to: charge the individual; continue to investigate; or close the investigation. Wherever possible, that review should take place no later than four weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

**Suspension**

The possible risk of harm to children posed by an accused person should be evaluated and managed in respect of the child(ren) involved in the allegations. In some rare cases that will require the Head to consider suspending the accused until the case is resolved.

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, taking full account of the views of the LADO and/or police.

If the Head is concerned about the welfare of other children in the community or the teacher's family, those concerns should be reported to the LADO or police during the investigation stage. But suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension should be considered primarily in a case where there is cause to suspect a child or other children at the school is/are at risk of harm or the case is so serious that it might be grounds for dismissal.

However, a person should not be suspended automatically: the Head must consider carefully whether the circumstances warrant suspension from contact with children at the school or until the allegation is resolved, and may wish to seek advice from the LADO.

In cases where the school 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 teaching pending the findings of the TRA's investigation.

The Head 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. If the designated officer(s), police and children's social care services have no objections to the member of staff continuing to work during the investigation, the case manager should be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternatives should be considered by the case manager before suspending a member of staff:

- redeployment within the school so that the individual does not have direct contact with the child or children concerned;
- providing an assistant to be present when the individual has contact with children;
- redeploying to alternative work in the school so the individual does not have unsupervised access to children;
- moving the child or children to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted; or
- temporarily redeploying the member of staff to another role in a different location

These alternatives allow time for an informed decision regarding the suspension and possibly reduce the initial impact of the allegation. This will, however, depend upon the nature of the allegation. The Head 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 case manager and the designated officer(s). 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 who their named contact is within the organisation and provided with their contact details.

Children's social care services or the police cannot require the Head to suspend a member of staff or a volunteer, although the Head should give appropriate weight to their advice. The power to suspend is vested in the proprietor of the school, or governing bodies of the school who are the employers of staff at the school. However, 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 designated officer(s) 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 while the school is considering suspension. 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.

### **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 employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

Children's social care services 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.

### **Specific actions**

#### **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 designated officer(s) 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. The options will depend on the circumstances of the case and the consideration will need to 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.

#### **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 Head will make a referral to the DBS for consideration as to 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 (although a referral to TRA is automatically triggered by one to the DBS).

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. 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 a pupil at the school.

#### **In respect of malicious or unsubstantiated allegations**

If an allegation is determined to be unsubstantiated or malicious, the designated officers(s) 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 Head or proprietor 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.

In such cases, the member of staff involved will be given strenuous assurances that the allegations will not be reported to a future employer in a school reference.

**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 HEAD 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 Head should consider how future investigations of a similar nature could be carried out without suspending the individual where a non-suspension would be appropriate.

## **APPENDIX 1: Types of Abuse**

### **Physical abuse**

- Evidence shows that allegations of physical abuse are more common than those of a sexual nature
- It often arises from incidents involving physical intervention or classroom management, where the actions of a member of staff are perceived as an excessive use of force, an assault, or both. **(See Policy on Use of Force)**
- Any incident of use of restraint will be kept on record

### **Sexual abuse**

- Allegations of sexual abuse can be extremely emotive and therefore difficult to deal with
- They can range from sexual assault to allegations of inappropriate touching, language or behaviour which are perceived to have a sexual motive
- All members of staff are placed in a position of trust and have a responsibility towards the children in the school
- Staff should be aware of what constitutes inappropriate contact with pupils and a clear code of behaviour should be adhered to (see **Staff Code of Conduct**)

### **Emotional abuse and neglect**

- Issues of emotional abuse and neglect are much more complex and are more likely to come to light via the school's complaints procedure.
- It can be an act of commission, eg bullying comments, racist remarks (emotional abuse)
- It can be an act of omission, eg failing to address bullying comments, racist remarks (neglect)

### **Examples of actions that may be interpreted as abuse**

Ill-treatment is an implicit element in all forms of abuse. It provides a measure, within the context of significant harm and alleged crime, for establishing a threshold for referral. Ill-treatment by a professional might include:

#### **Physical abuse**

Any form of physical assault (including attempts), eg:

- Punching
- Kicking
- Pushing
- Smacking
- Slapping
- Shaking
- Throwing a missile at a pupil (eg pencil, board rubber, etc)

#### **Sexual abuse**

- Any form of sexual assault (including attempts)



- Abuse of a position of trust
- Possession of indecent and pseudo indecent photographs of children (includes computer images)
- Showing indecent or pornographic material to children
- Inappropriate touching, language, or behaviour towards any child or pupil for sexual purposes
- Behaviour that may be interpreted by the child or by others as sexually inappropriate or grooming. In cases of 'indecent', the law generally allows a jury [representing the voice of the public at large] to decide what amounts to indecency.
- Inappropriate use of text messaging, e-mail or other IT towards any child or pupil for sexual purposes

### **Emotional abuse and neglect**

- Racial comments or behaviour, or failing to address these in others
- Homophobic comments or behaviour, or failing to address these in others
- Bullying pupils, or failing to address this in others
- Persistent sarcasm
- Belittling pupils
- Creating a climate of fear in the classroom
- Damaging a pupil's self-esteem through persistent lack of warmth and positive regard
- Abusing position of trust as a teacher by showing favouritism or forming too close a relationship with a child
- Inappropriate punishment involving humiliation or degradation of the child
- Failure to protect a child from physical harm or danger (eg school trips)
- Failure to ensure access to appropriate medical care or treatment (eg where a pupil sustains an injury)
- Failure to properly vet or monitor visiting public speakers who may attempt to recruit to their group, cause or ideology

### **Examples of actions that could constitute either emotional or sexual abuse**

The following are examples of actions, albeit not overtly abusive, that could be interpreted as a member of staff 'grooming' a child for sexual purposes:

- Inviting pupils to their homes
- Giving pupils gifts
- Offering pupils lifts outside normal duties
- Singling individual pupils out for special attention
- Seeing pupils socially
- Seeing pupils without the presence of other staff or pupils and/or in a room with restricted views from outside

The frequency, nature and degree of such behaviour may justify the need for further investigation under child protection or discipline procedures.

The above examples are not exhaustive and only serve as a guide. Many of these behaviours do constitute a criminal offence, some do not and some may not reach a threshold of significant harm, but they all constitute professional misconduct.

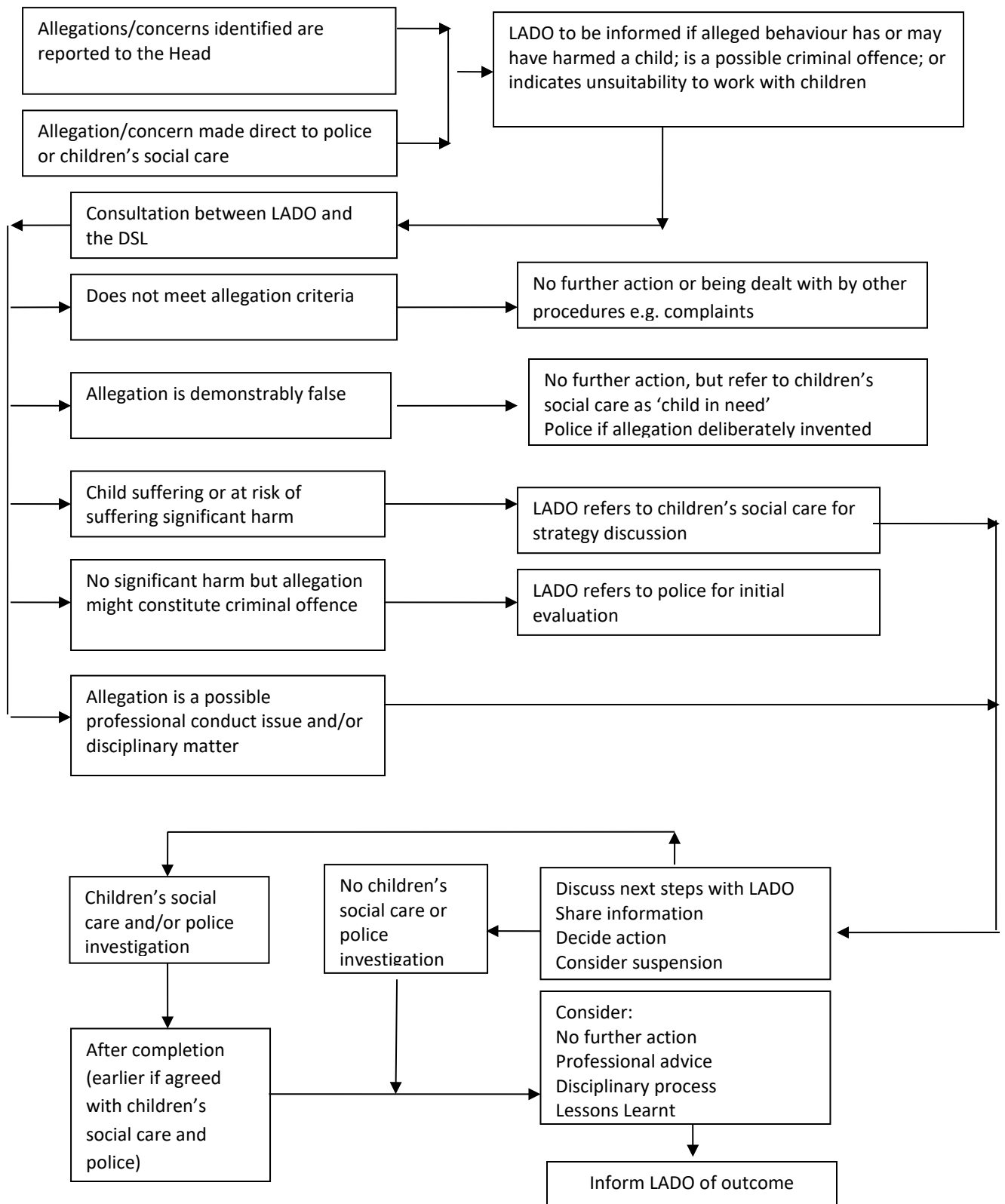
#### **Examples of actions that are non-abusive**

- Applying restraint consistent with legislation and guidance (see **Policy on Use of Force**)
- Removing with reasonable force potentially dangerous items from a pupil's possession, or a pupil from a dangerous location
- Shepherding pupils (eg hand of back/shoulder)
- Comforting (eg hand on arm/shoulder/back/hugging a younger child)
- Securing attention by tapping pupil's shoulder

Staff should be aware, however, that any physical contact with pupils could be open to misinterpretation. Perceptions and language can present very different views of the same incident. Tapping a child could be interpreted as an assault, particularly where there has been earlier disagreement between the child and the member of staff concerned. Some methods of comforting a child could be viewed as an unwanted sexual advance. Other than circumstances which are in accordance with the agreed **Use of Force to Control or Restrain Pupils Policy**, physical contact should be age appropriate, with the child's permission and limited to the needs of the child at the time.

APPENDIX 2

ALLEGATIONS/CONCERNS AGAINST STAFF  
BY DESIGNATED SAFEGUARDING LEAD (DSL) AND LA DESIGNATED OFFICER (LADO)



### **APPENDIX 3: Managing the situation and exit arrangements (taken from Part 4 of Keeping Children Safe in Education September 2019)**

#### **Resignations and ‘settlement 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 DBS must be made, if the criteria are met - see paragraphs 163-164 (KCSIE 2019). Schools and sixth form colleges must also consider whether a referral to the Secretary of State is appropriate – (see paragraph 166).

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. Any settlement/compromise agreement that would prevent a school or college from making a DBS referral even though the criteria for referral are met, is likely to result in a criminal offence being committed. This is because the school or college would not be complying with its legal duty to make the referral.

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. But 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. 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 a conclusion wherever possible.

‘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 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.

#### **Record keeping**

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

The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

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 pension age or for a period of 10 years from the date of the allegation if that is longer.

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

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. See paragraphs 144-147 (KCSIE 2019) for further information on references.

## Timescales

It is in everyone's interest to resolve cases as quickly as possible and is consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. Target timescales are shown below: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. It is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months.

For those cases where it is clear immediately that the allegation is unsubstantiated or malicious, they should be resolved within one week. Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the employer to deal with it, although if there are concerns about child protection, the employer should discuss them with the designated officer(s). In such cases, if the nature of the allegation does not require formal disciplinary action, the employer should instigate appropriate action within three working days. If a disciplinary hearing is required and can be held without further investigation, the hearing should be held within 15 working days.

## Oversight and monitoring

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

Police forces should also identify officers who will be responsible for:

- liaising with the designated officer(s);
- taking part in the strategy discussion or initial evaluation;
- subsequently reviewing the progress of those cases in which there is a police investigation;
- and
- sharing information on completion of the investigation or any prosecution.

If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to: charge the individual; continue to investigate; or close the investigation. Wherever possible, that review should take place no later than four weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

## Suspension

The possible risk of harm to children posed by an accused person should be evaluated and managed in respect of the child(ren) involved in the allegations. In some rare cases that will require the case manager to consider suspending the accused until the case is resolved. 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. If the case manager is concerned about the welfare of other children in 61 the community or the teacher's family, those concerns should be reported to the

designated officer(s), children's social care or the police as required. But suspension is highly unlikely to be justified on the basis of such concerns alone. Suspension should be considered only in a case 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 it might be grounds for dismissal. However, a person should not be suspended automatically: the case manager must consider carefully whether the circumstances warrant suspension from contact with children at the school or college or until the allegation is resolved, and may wish to seek advice from their personnel adviser and the designated officer(s). In cases where the 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 the school or sixth form college, immediate action should be taken to ensure the individual does not carry out work in contravention of the order, i.e. pending the findings of the TRA investigation, the individual must not carry out teaching work.

The case manager 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. If the designated officer(s), police and children's social care services have no objections to the member of staff continuing to work during the investigation, the case manager should be as inventive as possible to avoid suspension. Based on assessment of risk, 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, making it clear that this is not a punishment and parents have been consulted; or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or work for the local authority or academy trust.

These alternatives allow time for an informed decision regarding the suspension and possibly reduce the initial impact of the allegation. 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 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 case manager and the designated officer(s). 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 who their named contact is within the organisation and provided with their contact details.

Children's social care services or the police cannot require the case manager to suspend a member of staff or a volunteer, although they should give appropriate weight to their advice. The power to suspend is vested in the proprietor of the school, or governing bodies of the school or college who are the employers of staff at the school or college. However, 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 designated officer(s) 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 in order to inform the school or college consideration of suspension. 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.

### **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 employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

Children's social care services 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.

### **Specific actions**

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

The police should inform the employer and designated officer(s) 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 the person has been charged. In those circumstances, the designated officer(s) 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. The options will depend on the circumstances of the case and the consideration will need to 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.

#### **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 designated officer(s) should discuss with the case manager and their personnel adviser whether the school or college 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 at a school or sixth form college, whether to refer the matter to the TRA to consider prohibiting the individual from teaching. There is a legal requirement for employers to make a referral to the DBS where they 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. See paragraph 163.

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. 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 a pupil or student at the school or college.

**Disclosure and Barring Service – guidance on Referrals to the DBS.****In respect of malicious or unsubstantiated allegations**

If an allegation is determined to be unsubstantiated or malicious, the designated officer(s) 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, principal or proprietor should consider whether any disciplinary action is appropriate against the pupil or student 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 were not a pupil or student.

**Learning lessons**

At the conclusion of a case in which an allegation is substantiated, the designated officer(s) 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 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 designated officer(s) and case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

Further information 246. See the College of Policing: Engagement, Communication and Media relations