

## DEALING WITH ALLEGATIONS OF ABUSE AGAINST STAFF

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<b>Signed by Chair of Trustees Hugh Whittaker</b>	

**Linked policies:** Child Protection Policy; Disciplinary Policy; Capability Policy; Complaints Policy; Confidentiality Policy; Behaviour Policy; Data Protection Policy;

## Contents

1.	INTRODUCTION .....	3
2.	THE LAW .....	3
3.	INITIAL ALLEGATION MADE TO THE SCHOOL.....	3
4.	INITIAL CONSIDERATION.....	3
5.	ACTION FOLLOWING INITIAL CONSIDERATION .....	4
6.	CASES WHERE A CRIME MAY HAVE BEEN COMMITTED .....	4
7.	ALLEGATIONS WHICH ARE LIKELY TO NECESSITATE AN IMMEDIATE REFERRAL FOR CHILD PROTECTION.....	4
8.	SUSPENSION.....	5
9.	STRATEGY MEETING.....	5
10.	ATTENDANCE.....	6
11.	COMMUNICATION FOLLOWING THE STRATEGY MEETING.....	6
12.	MONITORING PROGRESS .....	6
13.	REFERRAL TO DFE .....	7
14.	KEEPING RECORDS .....	7
15.	CONFIDENTIALITY .....	7
16.	ACTION TO BE TAKEN IN RESPECT OF FALSE ALLEGATIONS.....	7
17.	LEARNING LESSONS .....	7
18.	INFORMATION SHARING .....	8
19.	RESIGNATIONS AND 'SETTLEMENT AGREEMENTS' .....	8
20.	SUPPORTING THOSE INVOLVED.....	8
	20.1 SUPPORTING THE EMPLOYEE.....	8
	20.2 SUPPORTING THE PARENTS.....	9
	APPENDIX 1 DEFINITIONS .....	10
	APPENDIX 2 INFORMATION GUIDE FOR EMPLOYEES FACING ALLEGATIONS .....	11
	APPENDIX 3 POLICY HISTORY .....	13

## 1. Introduction

Ventrus takes its duty of care for its pupils seriously. We recognise that any possibility that a member of staff may have hurt a pupil must be investigated thoroughly, but in a way that does not prejudice either the pupil or the member of staff. Any investigation of an allegation of abuse against a member of staff must follow the objective, professional standards and routines described here.

For Network Support Team staff at Ventrus, where this Policy states "Headteacher", read "Chief Executive" (or "the Chair of Board" in relation to an allegation against the Chief Executive).

## 2. The Law

The framework for managing cases of allegations of abuse against people who work with children is set out in 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children' (July 2018), which provides an overview of how allegations should be handled. It is relevant for the purposes of s.157 and s.175 of the Education Act 2002. Other legislation:

- The Children Act 1989
- Section 175 of the Education Act 2002
- The Children Act 2004

## 3. Initial Allegation Made to the School

Any allegation of abuse by a member of staff on a pupil must be reported to the Headteacher. Should the initial allegation first be made to any other member of staff then that member of staff must either request the person raising the allegation report it to the Headteacher, or if that is not possible, pass details of the allegation to the Headteacher, immediately. If the Headteacher is absent from school, the Director of School Improvement must be contacted immediately by the member of staff raising the allegation.

If an allegation is made against the Headteacher it should be brought to the attention of the Director of School Improvement in the first instance.

If the allegation meets any of the following criteria, the Headteacher must report the allegation to the Local Authority Designated Officer (LADO) and the Director of School Improvement on the same day that the allegation is received.

A teacher or member of staff (including a volunteer) in a school 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 they are unsuitable to work with children

## 4. Initial Consideration

The Headteacher will discuss the matter with the LADO and provide any further details of the allegation including the circumstances in which it was made. The Headteacher must not investigate the allegation at this stage. The discussion will also consider whether there is evidence or information that establishes that the allegation is false or unfounded.

If the allegation is not patently false and there is cause to suspect that a child is suffering or is likely to suffer significant harm, the LADO will immediately refer to Children's Social Care and ask for a strategy discussion to be convened straightaway, in accordance with Working Together to Safeguard Children. Under these circumstances, the strategy discussion should include the Local Authority Designated Officer and the Headteacher.

If there is not cause to suspect that "significant harm" is an issue, but a criminal offence might have been committed, the LADO should immediately inform the Police and convene a similar discussion to decide whether a Police investigation is needed. That discussion will also involve the school and any other agencies involved with the child.

## **5. Action Following Initial Consideration**

Where the initial determination is that the allegation does not involve a possible criminal offence, the Headteacher will be directed to manage it, in line with school procedures. In such cases, if the nature of the allegation does not require formal disciplinary action, the Headteacher should institute appropriate action within three working days. If a Disciplinary Hearing is required, and can be held without further investigation, the Disciplinary Hearing should be held within 15 working days.

Where further investigation is required, the Headteacher should discuss who will undertake that with the LADO. Any investigation will be conducted under the auspices of the Trust's Disciplinary Policy and Procedure. The investigating officer should aim to provide a report to the Headteacher within 10 working days.

On receipt of the report of the investigation, the Headteacher and Director of School Improvement should consult the LADO, and decide whether a Disciplinary Hearing is needed within two working days. If a Disciplinary Hearing is required, it should be held within 15 working days.

In any case in which Children's Social Care has undertaken enquiries to determine whether the child or children are in need of protection, the Headteacher and Director of School Improvement should take account of any relevant information obtained in the course of those enquiries when considering disciplinary action.

The LADO should continue to liaise with the school to monitor the progress of the case and provide advice or support when required or requested.

## **6. Cases Where a Crime may have been Committed**

If there is no cause to suspect that significant harm is an issue, but a criminal offence might have been committed, the LADO should immediately inform the police and convene a similar discussion to decide whether a police investigation is needed. That discussion should also involve the school.

Where the involvement of Children's Social Work Services is not required, as the pupil is not assessed to be at risk of significant harm, but a police investigation continues, the LADO should agree with the police, the school and any other agency involved with the child the nature of the allegation and how this must be addressed. This Joint Evaluation Discussion must take place within one working day of the referral and must consider how to progress enquiries e.g. a criminal process parallel with a disciplinary process or whether disciplinary action needs to be suspended until police enquiries/prosecution are completed.

These investigations must be reviewed by the police no later than 4 weeks after the Joint Evaluation Discussion and thereafter at fortnightly or monthly intervals.

If the police and/or the Crown Prosecution Service (CPS) decide not to charge the individual with an offence, or decide to administer a caution, or the person is acquitted by a court, the police should pass all information they have, which may be relevant to a disciplinary case, to the school without delay. In those circumstances, the Headteacher should deal with the case in consultation with the LADO.

If the person is convicted of an offence, the police should also inform the employer straight away so that appropriate action can be taken.

## **7. Allegations which are likely to necessitate an immediate referral for child protection**

The following situations will require immediate referral to child protection:

- Where the pupil has suffered, is suffering, or is likely to suffer significant or serious harm
- Where the pupil alleges that a criminal offence has been committed
- Any allegation of a sexual nature

The Headteacher should be aware that some other complaints may also be regarded as child protection issues and therefore each complaint should be carefully considered in consultation with the LADO before taking any action.

Where allegations of the above are referred to Children's Services, subsequent action will be in accordance with the Devon Children and Families Partnership (DCFP) procedures.

## **8. Suspension**

The possible risk of harm to children posed by an accused person needs to be effectively evaluated and managed in respect of the child(ren) involved in the allegations. In some cases, that will require the Headteacher to consider suspending the person, until the case is resolved. Suspension must not be an automatic response when an allegation is reported. If the Headteacher 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, but suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension should only be considered in a case where there is cause to suspect a child, or other children at the Headteacher, is or are at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal.

However, a person should not be suspended automatically, or without careful thought being given to the particular circumstances of the case.

The Headteacher must consider carefully whether the circumstances of the case warrant a person being suspended from contact with children at the school until the allegation is resolved. The decision to suspend a member of staff must be made jointly by the Headteacher and the Director of School Improvement; HR advice must be sought as part of the decision-making process. The Headteacher should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements. For example, redeployment so that the individual does not have direct contact with the child concerned, or providing an assistant to be present when the individual has contact with children. This allows time for an informed decision regarding the suspension and possibly reducing the initial impact of the allegation. This will however, depend upon the nature of the allegation.

The Headteacher should consider the potential permanent professional reputational damage to teachers that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended.

Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within one working day, giving the reasons for the suspension. The person should be informed at that point who their named contact is within the organisation, and provided with their contact details (*letter template available from Ventrus HR*).

Local authority children's social care services or the police cannot require the Headteacher to suspend a member of staff or a volunteer, although the Headteacher should give appropriate weight to their advice. The power to suspend is vested in the Headteacher or the Executive Leadership Team (ELT). However, where a strategy discussion or initial evaluation concludes that there should be enquiries by the local authority social care services and/or an investigation by the police, the LADO should canvass police and the local authority children's social care services for views about whether the accused member of staff needs to be suspended from contact with children to inform the Headteacher's consideration of suspension.

A risk assessment should be carried out for each individual case to determine whether the member of staff should be suspended. The assessment should take into account the context of the allegation, background information in relation to the member of staff, and any outcome following the strategy meeting. It should also take into account whether a temporary transfer or period of paid leave is appropriate as an alternative to suspension. The assessment must be recorded and a copy kept on file.

## **9. Strategy Meeting**

A Strategy Meeting will be convened within one working day of the referral being made and chaired by the Child Protection and Review Unit. The LADO and all relevant personnel including, where appropriate, the Headteacher and HR, should attend this meeting in order to share information and participate in the planning of any enquiries.

The strategy meeting will be conducted in accordance with Devon Children and Families Partnership (DCFP) procedures, the purpose being to:

- Consider the risk to the pupil and other pupils
- Share all relevant information about the person who is the subject of the allegation and about the alleged victim
- Determine the need for investigation and by whom
- Plan the investigation/enquiries and set timescales for tasks to be undertaken
- Consider whether any other children are affected by the allegations e.g. the persons own children, grandchildren or other children in the agency setting such as children placed with foster carers, childminders, a youth club
- Ensure that the person who is the subject of the allegation is kept informed and supported
- Decide how regular information and support will be provided to the child and family and by whom
- Plan all interviews and agree who should undertake them so that there is no confusion between a criminal investigation (Section 47 Enquiry) and disciplinary processes
- Consider the need to inform relevant parties
- Jointly consider how to manage any media interest
- Consider whether the circumstances require the person who is subject to the allegation to be suspended from contact with pupils, though this may change as the investigation progresses and should be reviewed regularly
- If the allegation is against a governor, a temporary member of staff or a supply teacher, the appropriate course of action needs to be considered.

## **10. Attendance**

Attendance will be determined by the Trust's procedures, but will usually include representatives from Children's Services. The member of staff who is the subject of the allegation will not be invited to attend the meeting; however, the strategy meeting will agree when and how the member of staff will be informed. The confidential minutes of the strategy meeting will be circulated by the chair of the meeting to relevant parties.

## **11. Communication following the strategy meeting**

The following should be informed of the outcome of the investigation:

- The pupil making the allegation and their parent/carer of the likely course of action. Also informing them that the matter is confidential and must not be discussed.
- The member of staff against whom the allegation has been made. This should include the likely course of action. A record should be kept on the individual's personal file.
- Headteacher and Director of School Improvement should be informed of the likely course of action.

Subsequent Strategy Meetings should be held fortnightly, or at a maximum, monthly to review progress.

## **12. Monitoring progress**

The LADO should regularly monitor the progress of cases, either via review Strategy Meetings, or by liaising with the police and/or Children's Social Work Services colleagues or the Headteacher, as appropriate. Reviews should be conducted at fortnightly or monthly intervals depending on the complexity of the case.

### **13. Referral to DFE**

If on conclusion of the case the Headteacher ceases to use the person's services, or the person ceases to provide his or her services, the Headteacher should consult the LADO about whether a referral to the Disclosure & Barring Service (DBS) is required. If a referral is appropriate the report should be made within one month by the Headteacher of the school concerned.

### **14. Keeping records**

It is important that a clear and comprehensive record of any allegation is made even if police/disciplinary action is not taken or proven. This should include details of the allegation, how the allegation was followed up and resolved and a note of any action taken, including any sanctions imposed. The record should be kept on the member of staff's personal file. The purpose of this record is to enable accurate information to be given in response to any future reference request if the individual leaves the school.

It is also important that accurate and detailed information is held in the event that the Disclosure and Barring Service (DBS) makes requests for further information. This information is given to the DBS if the matter is referred due to the nature of the allegation. A comprehensive record of all allegations will provide clarification in cases where a future DBS disclosure reveals information from the police about an allegation which did not result in a criminal conviction. The record should be retained until normal retirement age or for ten years if that is a longer period of time.

### **15. Confidentiality**

Confidentiality should be maintained when an allegation is made. However, there may be a need to share information with relevant agencies, for example at a strategy meeting on a need to know basis. Any enquiries from the press should be directed to the Headteacher and/or Director of School Improvement unless it is a Freedom of Information or Data Protection request, in which case this should be referred to the Trust's Senior Executive Assistant.

### **16. Action to be taken in respect of false allegations**

If an allegation made by a pupil is proved to be false and/or malicious, action should be taken to determine whether the person who made the allegation is in need of services or may have been abused by someone else.

In the case of a pupil deliberately inventing or making a malicious allegation, the Headteacher should consider talking action in accordance with the Behaviour Policy.

If it is clear to the Headteacher and the LADO that the allegation is demonstrably false or unfounded the member of staff should be informed verbally and in writing of the allegation, that it is without foundation and that no further action will be taken. Where appropriate, and if requested, support should be offered, which could include Occupational Health.

If an allegation made by a member of staff is proved to be false and/or malicious, an investigation should take place in accordance with the Trust's Disciplinary Policy and procedures. The police may also consider taking action against the individual making the allegation.

### **17. Learning Lessons**

Where an allegation has been made against a member of staff, lessons can be learned whether the allegations are proven or not. At the conclusion of a case, relevant parties should discuss what can be learned and therefore lead to improved practice, either to the Headteacher's procedures or to help prevent similar events in the future. The LADO and the Headteacher should review the case.

## **18. Information Sharing**

In a strategy meeting or initial evaluation of the case the agencies concerned must share all relevant information they have about the person who is the subject of an allegation, and about the alleged victim, staff attending the strategy meeting should be prepared with the appropriate information - e.g. full name, address, when DBS check was completed, start date, involvement in youth activities, children of their own and any other information that could be helpful.

As per procedures the police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the Headteacher for disciplinary purposes. This should be done as their investigation proceeds rather than after it has concluded. This will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

Children's Social Services should adopt a similar procedure when making enquiries to determine whether the pupil named in the allegation is 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 Headteacher without delay.

## **19. Resignations and 'Settlement Agreements'**

The fact that a person tenders his or her resignation, or ceases to provide their services, must not prevent an allegation being followed up in accordance with these procedures.

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 person 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 regarded as substantiated on the basis of all the information available should continue even if that cannot be done or the person 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.

By the same token so called 'Settlement Agreements' where a member of staff agrees to resign if the Headteacher agrees not to pursue the matter, and the form of words to be used in any future reference is agreed by both parties, **MUST NOT BE USED IN THESE CASES.**

In any event, such an agreement will not prevent a thorough police investigation where that is appropriate. Nor can it override the statutory duty to make a referral to the DBS where circumstances require that.

For avoidance of doubt and to provide safeguards, no Settlement Agreement can be entered into without the authorisation of the Chief Executive Officer. In any case where Settlement Agreements are approved, the Trust must comply with EFA policy which may include disclosure information which would otherwise be considered confidential.

## **20. SUPPORTING THOSE INVOLVED**

### **20.1 Supporting the Employee**

The Headteacher has a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations and disciplinary process. Support for the individual is key 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 local authority 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 welfare counselling or medical advice.

The Headteacher 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. That may include support from Occupational Health.

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 must not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

## **20.2 Supporting the Parents**

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 local authority children's social care services need to be involved, the Headteacher should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents. They 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. In deciding what information to disclose, careful consideration should be given to the provisions of the Data Protection Act 2018, the law of confidence and, where relevant, the Human Rights Act 1998.

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

## APPENDIX 1 DEFINITIONS

### Significant Harm

This is the threshold where compulsory Social Care intervention must take place. This was introduced by the Children Act 1989 and is defined by the Law Commission as: "Harm as a concept should be taken to include not only ill-treatment (including sexual abuse and forms of ill treatment that are not physical) but also the impairment of physical or mental health and the impairment of physical, emotional, social or behaviour development"

### Abuse

Abuse can consist of physical, sexual, neglect and emotional. The definitions of abuse are below.

#### Types of abuse:

1. **Physical abuse:** This includes hitting, slapping, pushing, kicking, and misuse of medication, restraint or inappropriate sanctions.
2. **Sexual abuse:** This includes rape, sexual activities to which a child has not/could not consent to, or was pressurised into consenting. Sexual activities could include physical contact or non-physical contact. Non-physical contact could be encouraging children/young people to watch sexual activities or behave in a sexually inappropriate way.
3. **Neglect:** This is the persistent failure to meet a child/young person's basic physical or psychological needs, likely to result in the serious impairment of the child/young person's health or development. It includes a failure to provide access to appropriate health, social care or educational services or withholding the necessities of life such as medication, adequate nutrition, clothing, shelter and heating.
4. **Emotional abuse:** Emotional is the persistent emotional maltreatment of a child/young person. This could have a severe and adverse effect on a child's/young person's development. This may involve conveying to the child/young person that they are worthless, or unloved, inadequate or valued only in so far as they meet the needs of another person. It also includes humiliation, blaming, controlling, intimidation, isolation or withdrawal from services or supportive networks. Some level of emotional abuse is involved in all types of maltreatment of a child/young person, although it may occur alone.

### Position of Trust

Those working with children and young people should understand that they are in positions of power and trust in relation to these groups. There is potential for exploitation and harm to children and young people and employees have a responsibility to ensure that an unequal balance of power is not used for personal advantage or gratification. Employees should always maintain professional boundaries and avoid behaviour which might be misinterpreted by others.

## **APPENDIX 2 INFORMATION GUIDE FOR EMPLOYEES FACING ALLEGATIONS**

The aim of this information guide is to explain the processes involved, and the support and guidance available, if it is alleged that that you have:

- harmed a pupil or put a child at risk of harm, or
- committed a criminal act toward a pupil, or
- behaved in a way that raises concern about your suitability to work with children or young people

### **1) Initial Action**

As soon as possible after the allegation is made, the Headteacher should consult the LADO ("LADO") to discuss the next action, taking advice from Social Care and Police as needed. Police may advise that you are not told about the allegation immediately.

The Headteacher's decision in consultation with the LADO will be one, or a combination of the following:

- a) The pupil is alleged to have suffered, or is likely to suffer significant harm - which requires immediate referral to Social Care
- b) A criminal offence is alleged - which requires referral to Social Care and Police
- c) The allegation represents poor or inappropriate behaviour - which should be considered under the Trust's disciplinary and/or capability procedures, including referral if appropriate to the Headteacher's occupational health advisor.
- d) The allegation is clearly and demonstrably without foundation and no further action will be taken.

If the conclusion of the initial discussions are a) or b), a Strategy Discussion should take place involving Police, Social Care, the Headteacher, LADO and the Trust's HR Business Partner. You will not be invited. The discussion will focus on the needs of the pupil(s) who may be at risk. It will determine what action should be taken regarding further investigation, but it is not part of any disciplinary procedures.

If the initial discussions conclude the situation is as outlined in c): an investigation will be initiated under the Trust's disciplinary and/or capability procedures. If the conclusion is as outlined in d) you should be told orally and in writing that the allegation is without foundation, and that no further action will be taken.

### **2) Types of Possible Investigation**

- Child protection enquiries by Social Care
- Criminal Investigation by Police
- Disciplinary/capability investigation

A disciplinary investigation will usually be held in abeyance until external agency investigations are complete, unless prior agreement is reached. Whilst these investigations should be conducted as speedily as possible, they should also be balanced against the need to be thorough and fair, in line with natural justice. Statements taken in external investigations could be used in subsequent disciplinary proceedings.

### **3) Suspension**

Suspension is a neutral act, and should not be automatic. Where possible, the decision to suspend should be informed by the Strategy Discussion, and should only occur when the known facts relating to the allegation indicate:

- a pupil may be at risk

- the allegations are so serious that dismissal for gross misconduct is possible suspension is necessary to allow the conduct of the investigation to proceed unimpeded

Alternatives to suspension will be considered, e.g. leave of absence, transfer of duties, additional supervision.

Where suspension is being considered, an interview with you will normally be arranged. You have the right to be accompanied by a Trade Union representative or a colleague. You are advised to seek the assistance of your Union representative.

If you are suspended, one of his/her roles will be to promote your interests and raise issues that may be of concern to you.

The interview is not an examination of the evidence, but an opportunity for you to make representations concerning possible suspension.

Other people, including other staff, should only be told about the allegation on a 'need to know basis'. Notification may be delayed if Police think this could prejudice an investigation.

Those who will be told of the allegation and likely course of action include you, the pupil concerned, his/her parent/carer, the person making the allegation, your manager, the Headteacher, HR, the LADO and the investigating agencies as above.

If you are suspended, those persons likely to be on a disciplinary panel, if convened, will be given limited information so any future disciplinary process is not prejudiced. If the matter becomes common knowledge, it may be necessary to issue a brief statement, agreed by the agencies concerned, to parents, pupils and the public.

#### **4) Support**

You should expect to be:

- advised to contact your Union representative
- given a Support contact within the organisation who should keep you up to date with progress of your case
- given a team contact, if you are suspended, who will update you about normal organisation activities. Social contact with colleagues should not be precluded unless detrimental to the investigation. The type of information and frequency of contact should be agreed, but colleagues should not comment on or discuss the investigation
- offered a Counselling Service and/or Occupational Health support.
- This may be a stressful time, so in addition to contacting your Union representative, you are advised to see your GP if you think your health may be affected.

