

Chapter 5: Dealing With Allegations of Abuse Against Teachers and Other Staff

Summary

It is essential that any allegation of abuse made against a teacher or other member of staff or volunteer in an education setting is dealt with fairly, quickly, and consistently, in a way that provides effective protection for the child, and at the same time supports the person who is the subject of the allegation.

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* (April 2006) which provides an overview, and in Appendix 5 of this guidance which provides detailed procedures on how allegations should be handled.

This chapter explains how those procedures should be applied specifically in the education sector. Like Chapters 2, 3, and 4 of this guidance it is relevant for the purposes of s157 and s175 of the Education Act 2002.

All schools, including non-maintained schools, independent schools, and academies, FE colleges, and local authorities exercising education functions, should use this guidance to review and, where appropriate, modify their practice and procedures for dealing with allegations of abuse made against teachers and education staff.

Introduction

5.1 This chapter is about managing cases of allegations that might indicate that a person is unsuitable to continue to work with children in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff (including a volunteer in a school, FE college or other education establishment that provides education for children under 18 years of age) 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 child; or

- behaved towards a child or children in a way that indicates s/he is unable to work with children.

5.2 All schools and FE colleges should have procedures for dealing with allegations, and all staff and volunteers should understand what to do if they receive an allegation against another member of staff, or if they themselves have concerns about the behaviour of another member of staff. The procedure should make it clear that all allegations should be reported straight away, normally to the head teacher or principal, and identify the person, often the chair of governors¹, to whom reports should be made in the absence of the head teacher or principal, or in cases where the head teacher or principal is the subject of the allegation or concern. Procedures should also include contact details for the designated local authority officer responsible for providing advice and monitoring cases.

5.3 There may be up to three strands in the consideration of an allegation:

- a police investigation of a possible criminal offence;
- enquiries and assessment by children's social care about whether a child is in need of protection or in need of services;
- consideration by the school or FE college of disciplinary action in respect of the individual².

Some cases will also need to be reported to DfES for consideration of including the person on List 99, or consideration by the General Teaching Council (GTC), about possible sanctions against an individual.

Supporting those involved

5.4 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 (subject to paragraph 5.15). 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. Please note that 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.³

EVERY CHILD MATTERS

1 References to the chair of governors or the governing body of a school or FE college should be taken to be a reference to the proprietor in the case of an independent school.

2 In some circumstances the school at which the person works will need to consider a case in which normal disciplinary procedures do not apply, and may need to act jointly with another organisation. That will be necessary when, for example, an allegation is made

against a supply teacher provided by an employment agency or business, or against a person employed by a contractor, or a volunteer provided by a voluntary organisation. In some cases normal disciplinary procedures may not be appropriate because the person is a volunteer or self employed. Although in those cases the school or FE college will not have a direct employment relationship with the individual, it and the other organisation concerned, if any, will need to be involved and cooperate in an investigation, and in reaching a decision about whether to continue to use the person's services, or to provide the person for work with children in future, and whether to report the person to DfES.

3 In deciding what information to disclose, careful consideration should be given to duties under the Data Protection Act 1998, the law of confidence and, where relevant, the Human Rights Act 1998.

- 5.5 In cases where a child may have suffered significant harm, or there may be a criminal prosecution, children's social care, or the police as appropriate, should consider what support the child or children involved may need.
- 5.6 The school or FE college should also keep the person who is the subject of the allegations informed of the progress of the case and consider what other support is appropriate for the individual. For staff in maintained schools that may include support via the local authority occupational health or employee welfare arrangements. If the person is suspended, the school or FE college should also keep the individual informed about developments at school or FE college. If the person is a member of a union or professional association s/he should be advised to contact that body at the outset.

Confidentiality

- 5.7 Every effort should be made to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. In accordance with the Association of Chief Police Officers' (ACPO) guidance the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. (In exceptional cases where the police might depart from that rule, e.g. an appeal to trace a suspect, the reasons should be documented and partner agencies consulted beforehand.)

The system of self-regulation, overseen by the Press Complaints Commission, also provides safeguards against the publication of inaccurate or misleading information.

Resignations and Compromise

Agreements

- 5.8 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.

- 5.9 By the same token so called “compromise agreements” by which a person agrees to resign, the school or FE College agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, 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 List 99 where circumstances require that.

Record Keeping

- 5.10 It is important that a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person’s confidential personnel file, 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 if the person has moved on. It will provide clarification in cases where a future CRB Disclosure reveals information from the police about an allegation that did not result in a criminal conviction. And it will help to prevent unnecessary reinvestigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

Timescales

- 5.11 It is in everyone’s interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. Every effort should be made to manage cases to avoid any unnecessary delay. Indicative target timescales are shown for different actions in the summary description of the process below. Those are not performance indicators: 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 they provide useful targets to aim for that are achievable in many cases. *Working Together to Safeguard Children* states that it is reasonable to expect 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.

Oversight and Monitoring

- 5.12 Local authorities with responsibility for schools should have a named senior officer who has overall responsibility for oversight of the procedures for dealing with allegations, for resolving any interagency issues, and for liaison with the Local Safeguarding Children Board (LSCB) on the subject. In addition, designated local authority officers should also

be involved in the management and oversight of individual cases. The designated local authority officer(s) will provide advice and guidance to schools and FE colleges, 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.

- 5.13 Police forces should also identify officers to fill similar roles: a senior officer to have strategic oversight of the arrangements and ensure compliance; and others, perhaps unit managers, who will be responsible for: liaising with the designated local authority 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.

Initial Considerations

- 5.14 The procedures need to be applied with common sense and judgement. In rare cases allegations will be so serious as to require immediate intervention by children's social care and/or police. Others that meet the criteria in paragraph 5.1 may seem much less serious and on the face of it will not warrant consideration of a police investigation, or enquiries by children's social care. However, it is important to ensure that even allegations that appear less serious are seen to be followed up and taken seriously, and that they are examined objectively by someone independent of the school or FE college concerned. Consequently, the local authority designated officer should be informed of all allegations that come to the school's or FE college's attention and appear to meet the criteria in paragraph 5.1, so that s/he can consult police and social care colleagues as appropriate. The local authority designated officer should also be informed of any allegations that are made directly to the police (which should be communicated via the police force's designated officer) or to children's social care.
- 5.15 The local authority designated officer's first step will be to discuss the allegation with the head teacher/principal (or chair of governors) to confirm details of the allegation and establish that it is not demonstrably false or unfounded. If the parents/carers of the child concerned are not already aware of the allegation, the designated officer will also discuss how and by whom they should be informed. In circumstances in which the police or social care may need to be involved, the local authority officer should consult those colleagues about how best to inform parents. However, in some circumstances the school or FE college may need to advise parents of an incident involving their child straight away, for example if the child has been injured while at school or FE college, or in a school or FE college related activity, and requires medical treatment.
- 5.16 The head teacher/principal should inform the accused person about the allegation as soon as possible after consulting the local authority

designated officer. However, where a strategy discussion is needed, or police or children's social care may need to be involved, the head or principal should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the person. If the person is a member of a union or professional association s/he should be advised to contact that organisation at the outset.

- 5.17 If the allegation is not demonstrably false or unfounded, and there is cause to suspect a child is suffering or is likely to suffer significant harm, a strategy discussion should be convened in accordance with paragraph 5.54 of *Working Together to Safeguard Children*. Please note that in these cases the strategy discussion should include a representative of the school or FE college (unless there are good reasons not to do that), and take account of any information the school or FE college can provide about the circumstances or context of the allegation and the pupil and member of staff concerned.
- 5.18 In cases where a formal strategy discussion is not considered appropriate because the threshold of "significant harm" is not reached, but a police investigation might be needed, the local authority designated officer should nevertheless conduct a similar discussion with the police, the school or FE college, and another agencies involved with the child to evaluate the allegation and decide how it should be dealt with. (Please note that the police must be consulted about any case in which a criminal offence may have been committed.) Like a strategy discussion, that initial evaluation may not need to be a face to face meeting. It should share available information about the allegation, the child, and the person against whom the allegation has been made, consider whether a police investigation is needed and if so, agree the timing and conduct of that. In cases where a police investigation is necessary the joint evaluation should also consider whether there are matters which can be taken forward in a disciplinary process in parallel with the criminal process, or whether any disciplinary action will need to wait completion of the police enquiries and/or prosecution.
- 5.19 If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take account of the fact that teachers and other school and FE college staff are entitled to use reasonable force to control or restrain pupils in certain circumstances, including dealing with disruptive behaviour, under 550A of the Education Act 1996. DfES guidance about that can be found at:
- http://www.dfes.gov.uk/publications/guidanceonthelaw/10_98/summary.htm
- 5.20 If the complaint or allegation is such that it is clear that an investigation by police and/or enquiries by social care are not necessary, or the strategy discussion or initial evaluation decides that is the case, the local authority designated officer should discuss next steps with the head

teacher/principal and chair of governors. In those circumstances the options open to the school or FE college depend on the nature and circumstances of the allegation and the evidence and information available, and will range from taking no further action to summary dismissal or a decision not to use the person's services in future.

- 5.21 In some such cases further enquiries will be needed to enable a decision about how to proceed. If so, the local authority designated officer should discuss with the head teacher/principal and chair of governors how and by whom the investigation will be undertaken. In straightforward cases that should normally be undertaken by a senior member of the school or FE college staff. However, in other circumstances, lack of appropriate resource within a school or FE college, or the nature or complexity of the allegation, will require an independent investigator. Many local authorities already provide for an independent investigation of allegations in some way, often as part of the personnel services that schools and FE colleges can buy in from the authority. It is important that local authorities ensure that schools and FE colleges have access to an affordable facility for independent investigation where that is appropriate.

Suspension

- 5.22 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, and any other children in the individual's home, work or community life. In some cases that will require the school or FE college to consider suspending the person until the case is resolved.
- 5.23 Suspension should be considered in any case where there is cause to suspect a child is at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for dismissal. However, a person must not be suspended automatically, or without careful thought. Schools and FE colleges must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children until the allegation is resolved, and may wish to seek advice from their personnel adviser. Schools and FE colleges should also consider whether the result that would be achieved by suspension could be obtained by alternative arrangements.
- 5.24 Neither the local authority, the police, nor children's social care, can require a school or FE college to suspend a member of staff or a volunteer. The power to suspend is vested in the head teacher or principal and the governing body of the school or FE college. However, where a strategy discussion or initial evaluation concludes that there should be enquiries by social care and/or an investigation by the police, the local authority designated officer should canvass police and social care views about whether the accused member of staff needs to be suspended from contact with children, to inform the school or FE college's consideration of suspension.

Monitoring Progress

- 5.25 The local authority designated officer should regularly monitor the progress of cases either via review strategy discussions or by liaising directly with the police and/or children's social care colleagues, or the employer as appropriate. Reviews should be conducted at fortnightly or monthly intervals depending on the complexity of the case.
- 5.26 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.

Information Sharing

- 5.27 In a strategy discussion or the initial evaluation of the case the agencies concerned should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.
- 5.28 Wherever possible the police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the school for disciplinary purposes. That should be done as their investigation proceeds rather than after it is concluded. That will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.
- 5.29 Children's social care should adopt a similar procedure when making enquiries to determine whether the child or children 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 school or FE college without delay.

Action Following a Criminal Investigation or a Prosecution

- 5.30 The police or the Crown Prosecution Service (CPS) should inform the school or FE college and local authority designated officer straightaway when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to prosecute after the person has been charged. In those circumstances the local authority designated officer should discuss with the head teacher or principal and chair of governors 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 should

inform that decision. The options will depend on the circumstances of the case and the consideration will need to take account of the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

Action on Conclusion of a Case

- 5.31 If the allegation is substantiated and the person is dismissed or the school or FE college ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the local authority designated officer should discuss with the school or FE college and its personnel adviser whether a referral to DfES for consideration of List 99 action or by the GTC is required, or advisable, and the form and content of a referral.
- 5.32 In cases where it is decided on the conclusion of the case that a person who has been suspended can return to work, the school or FE college should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a very 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 school or FE college 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 attending the school or FE college.

Learning Lessons

- 5.33 At the conclusion of a case in which an allegation is substantiated the local authority designated officer should review the circumstances of the case with the head teacher and chair of governors to determine whether there are any improvements to be made to the school's or FE college's procedures or practice to help prevent similar events in the future.

Action in respect of False Allegations

- 5.34 If an allegation is determined to be false, the local authority designated officer should refer the matter to children's social care to determine whether the child concerned is in need of services, or may have been abused by someone else. In the rare event that an allegation is shown to have been deliberately invented or malicious, the head teacher or principal should consider whether any disciplinary action is appropriate against the pupil who made it, or the police should be asked to consider whether any action might be appropriate against the person responsible if s/he was not a pupil. The next section summarises the process for dealing with allegations.

Summary of Process

Allegation made to school or FE college

- 5.35 The allegation should be reported to the head teacher or principal immediately unless the allegation is about the headteacher or principal in which case it should be reported to the chair of governors.
- 5.36 If the allegation meets any of the criteria set out in paragraph 5.1, the headteacher or principal should report it to the local authority designated officer the same day.

Allegation made to the police or children's social care

- 5.37 If an allegation is made to the police, the officer who receives it should report it to the force designated liaison officer without delay and the designated liaison officer should inform the local authority designated officer straightaway. Similarly if the allegation is made to children's social care the person who receives it should report it to the local authority designated officer without delay.

Initial consideration

- 5.38 The local authority designated officer will discuss the matter with the headteacher or principal and where necessary obtain further details of the allegation and the circumstances in which it was made. The headteacher or principal should not investigate the allegation at this stage. The discussion should also consider whether there is evidence or information that establishes that the allegation is false or unfounded.
- 5.39 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 local authority designated officer will immediately refer to children's social care and ask for a strategy discussion in accordance with *Working Together to Safeguard Children* to be convened straightaway. In those circumstances the strategy discussion should include the local authority designated officer and the headteacher or principal.
- 5.40 If there is not cause to suspect that "significant harm" is an issue, but a criminal offence might have been committed, the local authority designated officer 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 or FE college and any other agencies involved with the child.

Action following initial consideration

- 5.41 Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the employer to deal with it. In 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 hearing should be held **within 15 working days**.

- 5.42 Where further investigation is required to inform consideration of disciplinary action the head teacher or principal and the school or FE college personnel adviser should discuss who will undertake that with the local authority designated officer. In some settings and circumstances it may be appropriate for the disciplinary investigation to be conducted by a person who is independent of the school or FE college. In any case the investigating officer should aim to provide a report to the employer **within 10 working days**.
- 5.43 On receipt of the report of the disciplinary investigation, the head teacher and chair of governors should consult the local authority designated officer, and decide whether a disciplinary hearing is needed **within two working days**. If a hearing is needed it should be held **within 15 working days**.
- 5.44 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 head teacher or principal and chair of governors should take account of any relevant information obtained in the course of those enquiries when considering disciplinary action.
- 5.45 The local authority designated officer should continue to liaise with the school or FE college to monitor progress of the case and provide advice or support when required or requested.

Case subject to police investigation

- 5.46 If a criminal investigation is required, the police will aim to complete their enquiries as quickly as possible, consistent with a fair and thorough investigation, and will keep the progress of the case under review. They should at the outset set a target date for reviewing progress of the investigation and consulting the CPS about whether to proceed with the investigation, charge the individual with an offence, or close the case. Wherever possible that review should take place **no later than four weeks** after the initial action meeting and if the decision is to continue to investigate the allegation dates for subsequent review should be set at that point. (It is open to the police to consult the CPS about the evidence that will need to be obtained in order to charge a person with an offence at any stage.)
- 5.47 If the police and/or 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 wherever possible aim to pass all information they have which may be relevant to a disciplinary case to the employer

within three working days of the decision. In those circumstances the employer and the local authority designated officer should proceed as described in paragraphs 5.41 to 5.45 above. In any case in which children's social care has undertaken enquiries to determine whether the child or children are in need of protection, any information obtained in the course of those enquiries which is relevant to a disciplinary case should also be passed to the school or FE college.

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

Referral to DfES

- 5.49 If on conclusion of the case the school or FE College ceases to use the person's services, or the person ceases to provide his or her services, the school or FE College should consult the local authority designated officer about whether a referral to DfES is required. If a referral is appropriate the report should be made within one month. See Appendix 10 for guidance on reporting individuals to the Secretary of State.