

Managing Allegations against Staff and Volunteers West Sussex Practice Guidance

This document describes the practice guidance that should be followed in response to allegations made against staff and volunteers in relation to their work with children and young people.

It applies to all employers and organisations working with children.

Its purpose is to promote and protect the welfare of children through responsive and effective safeguarding procedures.

2. PRINCIPLES

- Nothing is more important than a child's welfare
- Cases should be resolved as quickly as possible, consistent with a fair and thorough investigation.

3. ROLES AND RESPONSIBILITIES

Local Authority (LA) also known as the **Designated Officer (DO)** are employed by the Council to as a LADO to:

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

It is important to be aware that LADO's do not carry out investigations into allegations – responsibility for allegations remains with the employer (or the person the employer commissions to investigate the process) and /or the police.

The LADO can provide advice and, where necessary, co-ordinate the process.

The LADO is also responsible for ensuring an appropriate outcome is reached.

Where it is not straightforward to establish which organisation should lead an investigation, for example, where responsibility may be shared between an employment agency and the organisation where the person was working, the LADO will also provide advice regarding which organisation is best placed to lead the investigation.

Senior officer

Each organisation should identify a named senior manager with overall responsibility for

- Ensuring that the organisation deals with allegations in accordance with the Pan Sussex Procedures
- Making statutory notifications to the Disclosure and Barring Service (DBS)
- Resolving any inter-agency issues
- Liaising with the local partnership
- Ensure that all staff and volunteers should be made aware of who these persons are and of the organisation's internal procedures.

Regulatory bodies

The Senior Manager will be aware of the relevant Regulatory Bodies that need to be consulted and will take appropriate actions.

4. ORGANISATIONS SHOULD ALSO APPOINT

- A designated safeguarding lead to whom allegations or concerns should be reported. This person should be a senior manager
- Seek advice from the LADO regarding incidents where it is unclear whether it is an allegation or a concern
- Report allegations of harm to the LADO
- A deputy to who reports should be made in the absence of the designated safeguarding lead or where that person is subject of the allegation or concern.

5. POLICE

The police have a **senior officer** to have strategic oversight of the arrangements to liaise with West Sussex & ensure compliance.

Police should:

- Liaise with the LADO
- Take part in strategy and evaluation discussions/meetings
- Review the progress of cases in which there is a police investigation
- Arrange for the sharing of information on completion of an investigation or prosecution.

6. OFSTED

Ofsted should be informed of the following:

Providers of Early Years' & Childcare

Registered providers must inform Ofsted of any allegations of serious harm or abuse by any person living, working, or looking after children at the premises (whether the allegations relates to harm or abuse committed on the premises or elsewhere).

Registered providers must also notify Ofsted of the action taken in respect of the allegations. These notifications must be made as soon as is reasonably practicable, but at the latest within 14 days of the allegations being made.

Registered providers must inform Ofsted of the details of any other significant event that is likely to affect the suitability of the provider or any person who cares for, or is in regular contact with, children on the premises. For example, this could be a change in circumstances affecting a provider's physical or mental ability to care for children.

The Childcare (General Childcare Register) Regulations 2008, the Statutory Framework for the Early Years Foundation Stage and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012.

Children's Homes including Secure Children's Homes

Providers of children's homes must notify Ofsted of any events or incidents including:

1. Any serious complaint about the home or persons working there.
2. The instigation and outcome of any child protection enquiry involving a child accommodated at the home.

The Children's Homes (Amended) Regulations 2011

Residential Family Centres

Providers of Residential Family Centres must notify Ofsted of any events or incidents including:

1. Any serious complaint about the centre or persons working there.
2. The instigation and outcome of any child protection enquiry involving a child or a parent who is under the age of 18 years, accommodated in the centre.

Residential Family Centres Regulations 2002 and The Residential Family Centres (Amendment) Regulations 2013

Independent Fostering Agencies

Providers of fostering agencies must notify Ofsted of any events or incidents including:

1. Any serious complaint about any foster parent approved by the fostering agency.
2. The instigation and outcome of any child protection enquiry involving a child placed with foster parents.

Fostering Services (England) Regulations 2011

Foster Carers

Facing an allegation of abuse or neglect is something that some foster carers may unfortunately, experience during their fostering career. Allegations are more serious than general concerns against foster carers because allegations have to be investigated under child

protection procedures. Allegations should be treated differently from concerns about poor standards of care.

The Fostering Service may have concerns about a foster carer, which may not warrant investigation under the child protection procedures but raises significant concerns about standards of care being provided. Although such concerns would not necessarily meet the threshold for S47 investigation, they may nonetheless constitute an allegation of a safeguarding concern against the carer. Standards of Care **might** include:

1. An incident of minor physical chastisement resulting in no injury
2. Inappropriate verbal chastisement
3. Issues regarding pocket money, general dietary issues, etc.
4. Incidents indicating inadequate supervision such as inadvertently allowing a child access to alcohol, prescribed medication, or unsuitable viewing of "adult" sexual material
5. Incidents indicating a lack of due care such as inadvertently wrongly administering prescribed medication.

Standards of Care issues should consider previous history of concerns and whether these are significant to an overall picture of risk.

The Fostering Group Manager must be informed of any Standards of Care issues. In a situation where it is unclear whether the matter constitutes a formal allegation against a foster carer (as opposed to a standard of care issue) the Fostering Practice Manager should consult the LADO who will discuss and advise on the allegation-management threshold. Where appropriate an investigation will proceed. Where necessary, an evaluation meeting may be called to consider the information and determine the next steps.

The plan for enquiry will depend on the nature and seriousness of the concern. Careful consideration should be given on a case by case basis as to whether the investigation should be:

1. Conducted by the fostering social worker within the parameters of usual foster carer supervision;
2. Be dealt with by an experienced social worker from the fostering service who is independent of the foster carer; or
3. Be dealt with by a Fostering Practice Manager.

Depending on the nature of the concern, the Fostering Practice Manager in consultation with the Group Manager, will decide whether the report needs to be presented to the Fostering Panel which will trigger a review of the foster carer's approval so that they may make a recommendation about their continued suitability. This decision must be recorded clearly on Mosaic on the foster carers electronic file.

If the decision is that the report should be presented to the Fostering Panel, this should be completed within 28 days. The report and recommendations should include:

1. The carer's suitability and competence to fosters
2. Matters relevant to the placement of all children currently in the foster carer's household;

3. The placement of other children in the future and any variations in approval;
4. Implications for the registration of the foster carers;
5. Identified training needs and additional support requirements.

It will be the responsibility of the fostering team manager to ensure that appropriate support/advocacy is made available to the foster carers which is independent of any complaint/allegation investigation.

Adoption Support Agencies & Voluntary Adoption Agencies

Providers of adoption support agencies are required to notify Ofsted of specific events:

1. Any serious complaint about a prospective adopter approved by the agency where a child is placed for adoption with that prospective adopter by the agency.
2. Any serious complaint about a prospective adopter approved by the agency where a child is placed for adoption with that prospective adopter by another agency.
3. Instigation and outcome of any child protection enquiry involving a child placed for adoption by the agency.

Adoption Support Agencies (England) & Adoption Agencies Regulations 2005 & Adoption Regulations 2003

7. TARGETS FOR CONCLUSION OF CASES

The following targets should be achieved in all but truly exceptional cases:

- 80 per cent of cases should be resolved within **one month**
- 90 per cent within **three months**,
- All but the most exceptional cases should be completed within **12 months**.

8. CONFLICT OF INTEREST/IMPARTIALITY

Any person involved in the consideration and/or investigation of an allegation must declare any possible conflict of interest e.g. if the allegation relates to someone known to them such as a relative, friend, colleague, (including colleagues worked with regularly in another agency,) or someone from an organisation to which they are affiliated e.g. religious, social.

In all investigations and considerations of an allegation due regard should be given to ensuring objectivity and impartiality. Depending on the circumstances this may require, for example:

1. Use of staff who are sufficiently separate from the line management of the person subject to the allegation
2. An arrangement with the Police, SCS team and/or LADO from a different part of the County or an arrangement with another police authority or local authority, or
3. Use of an independent investigator.

9. PROCESS

- **Strategy Meeting**

Where it is suspected that a child is suffering, or is likely to suffer, significant harm the local authority is required by section 47 of the Children Act 1989 to make enquiries to enable it to decide whether it should take any action to safeguard and promote the welfare of the child.

- **Evaluation Meeting**

Following the strategy meeting or 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 LADO should nevertheless conduct a similar discussion with the police, the employer, and any other relevant agencies involved with the child to evaluate the allegation and decide how it should be dealt with.

Before any investigation commences the senior manager needs to determine if there is evidence / information to establish that the allegation is false or unfounded. The evaluation meeting, chaired by the LADO should share available information and consider whether a police investigation is needed and, if so, agree the timing and conduct of that. If the allegation is about physical contact, the strategy or evaluation discussion should take into account the circumstances where staff are entitled to use reasonable force to control or restrain children and young people.

Where a police investigation is necessary the meeting should consider whether there are matters that can be taken forward in a disciplinary process in parallel with any criminal process, or whether any disciplinary action will need to await completion of any police enquiries or prosecution.

In strategy and evaluation meetings 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.

Wherever possible the police should obtain consent from all witnesses to share their statements with the employer and should ensure that all suspect interview records, case summaries and other relevant information is shared without delay at the conclusion of the investigation or court case.

Children Social Care should seek to obtain similar consent when making enquiries to determine whether a child or children named in the allegation are in need of protection or services, and should pass on relevant information without delay, including consent for release of medical reports relevant to any disciplinary procedures.

- **Suspension**

The possible risk of harm to children posed by the 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 Senior Manager to consider suspending the person until the case is resolved. Suspension must not be an automatic response when an allegation is reported. If the Senior Manager is concerned about the welfare of other children in the community or the

employee's family, those concerns should be reported to the LADO, Children Social Care or police but suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension should only be considered in cases where:

1. There is cause to suspect a child or other children at the workplace is or are at risk of significant harm, or
2. The case is so serious that it might be grounds for dismissal.

However, a person should not be suspended automatically. The Senior Manager must consider carefully whether the circumstances of the case warrant a person being suspended from contact with children at the workplace until the allegation is resolved and may wish to seek advice from their personnel adviser and the LADO.

The Senior Manager should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. Based on an assessment of risk, the following alternatives should be considered by the case manager before suspending an individual.

1. Redeployment with the establishment so that the individual does not have direct contact with the child or children concerned.
2. Providing an assistant to be present when the individual has contact with children.
3. Redeploying to alternative work so the individual does not have unsupervised access to children.
4. Moving the child or children 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
5. Temporarily redeploying the member of staff to another role or in a different location.

Where it has been deemed appropriate to suspend the person, written confirmation should be sent within one working day, giving as much detail as possible for the reasons for the suspension and the suspension should be reviewed on a regular basis.

Only the organisation itself has the authority to suspend a member of staff; however, the Senior Manager should give appropriate weight to any recommendations of the Evaluation Meeting. If the organisation decides not to suspend against the recommendation of the Evaluation Meeting, Police and SCS will need to consider any other actions that they may need to take.

10. SUPPORTING THOSE INVOLVED

The child and their parents/carers:

Where appropriate, consideration should be given to informing the child / parent / carer about the allegation and who should do this. The senior manager should also keep them up to date with the progress of the case and the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process in confidence.

In cases where a child may have suffered significant harm, or there may be a criminal prosecution, Children Social Care or the police as appropriate, should consider what support

the child or children involved may need. Similarly, where a child has been harmed the employer should consider what support they should offer the child.

The person subject to the allegation:

Employers have a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations and disciplinary process. Individuals should be informed of allegations as soon as possible. Where Children Social Care or the police are involved, they must be consulted before any information is shared.

The employer should also consider what other support is appropriate for the individual. They should be advised to contact their trade union representative, if they have one, and given a named point of contact in the organisation. They should also be given access to welfare counselling or medical support where this is provided by the employer.

Consideration needs to be given 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. The individual should be advised not to discuss the case with colleagues.

Where it is decided, on the conclusion of the case, that the person who has been suspended can return to work, the Senior Manager 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 Senior Manager should also consider how the person's contact with the child or person who made the allegation can best be managed if s/he is to continue working with them.

11. Confidentiality

It is extremely important that, when an allegation is made, every effort is 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 should 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 depart from that rule, e.g. an appeal to trace a suspect, the reasons should be documented, and partner agencies consulted before hand.

At the strategy/evaluation discussion the Senior Manager should take advice from the LADO, Police and SCS to agree the following:

1. Who needs to know and, importantly, exactly what information can be shared?
2. How to manage speculation, leaks and gossip.
3. What, if any, information can be reasonably given to the wider community to reduce any speculation, and
4. How to manage press interest if and when it should arise.

Teachers:

The Education Act 2011 introduced reporting restrictions preventing the publication of any material that may lead to the identification of a teacher who has been accused by, or on behalf of, a pupil from the same school.

The legislation makes it an offence for any matter relating to the person to be included in any publication if it is likely to lead members of the public to identify the person as the teacher who is the subject of the allegation.

Publication is defined as:

Any speech, writing, relevant programme or other communication in whatever form, (including social media) which is addressed to the public at large or any section of the public.

It does not include an indictment or other document prepared for use in particular legal proceedings, nor a document published by the regulator of a profession of which the person who is the subject of the allegation is a member in connection with disciplinary proceedings in relation to the person.

Any person may make an application to a magistrates' court for an order dispensing with the restrictions and the court may make an order dispensing with these to the extent specified in the order, if it is satisfied that it is in the interests of justice to do so, having regard to the welfare of the person who is the subject of the allegation, and the victim of the offence to which the allegation relates.

12. REFERRALS TO THE DISCLOSURE AND BARRING SERVICE (DBSS) AND/OR REGULATORY BODIES

The restrictions cease to apply:

1. Once the teacher has been charged with an offence
2. If the Secretary of State publishes information about the person who is the subject of the allegation in connection with the investigation of disciplinary cases
3. If the person who is the subject of the allegation waives their right to anonymity, or
4. Gives their written consent for another person to do so.

Please note: The Education Act 2011 guidance on reporting restrictions only apply to teachers but this is good practice for all employers to consider.

Please note: Additional guidance for those working within an education setting is found by opening the following [attachment](#).

13. 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. 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 these 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', (previously known 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, must not be used in these cases. A settlement agreement will not prevent a police investigation where that is appropriate, nor does it override the statutory duty to make a referral to the DBS.

- **DBS**

Under the Safeguarding and Vulnerable Groups Act 2006 there is a **legal duty** for regulated activity providers and personnel suppliers to make a referral to the DBS where they have permanently removed a person from regulated activity through dismissal or permanent transfer from regulated activity (or would have done if the person had not left, resigned, retired or been redundant), and the person has carried out one of the following:

1. Been cautioned or convicted of a relevant (automatic barring) offence, or
2. Engaged in relevant conduct in relation to children that has harmed a child or put them at risk of harm, or

3. Satisfied the Harm Test in relation to children (i.e. No action or inaction occurred but the present risk that it could was significant). To satisfy the harm test there needs to be credible evidence of risk of harm to children such as statements made by an individual regarding conduct / behaviour etc.

The DBS can only bar a person from working within regulated activity with children or adults if it is believed the person is or has been, or might in the future be, engaged in regulated activity. The only exception to this is where a person is cautioned or convicted for a relevant (automatic barring) offence and is not eligible to submit representations against their inclusion in a barred list.

Additionally, where a person is cautioned or convicted of a relevant (automatic barring) offence with the right to make representations, the DBS will ask the person to submit their representations and consider them before making a final barring decision.

Local authorities, schools, Further Education colleges and other bodies all have a statutory duty to make reports, and to provide relevant information to the DBS. Referrals should be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services.

Under the Safeguarding and Vulnerable Groups Act 2006 the following groups have a **legal power** to refer:

1. Local authorities
2. Keepers of Registers and
3. Supervisory Authorities.

This should be considered where additional, relevant information is held in addition to any to that available from the court process and / or court outcome.

- **Regulatory Bodies**

Employers should refer to the guidance published by their relevant regulatory body to determine if and when any allegation of professional misconduct should be reported to them.

14. RECORD KEEPING

All those involved in dealing with allegations against persons working with children, including the person to whom the allegation is made in the first instance, should make clear, accurate and comprehensive records which should be signed, dated and timed. The record should provide details of the allegation, how it was followed up and resolved and notes of any action taken and decisions made. A comprehensive summary of this should be made and a copy kept on the personnel file and copy of given to the individual. Comprehensive notes should be made of any strategy and evaluation discussions which are agreed by and distributed to all present.

These should be held on the confidential personnel file but not shared with the individual 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 Disclosures 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 resurfaces 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. [The Information Commissioner \(p.35, paragraph 2.13.1\)](#) has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention.

For teachers, details of allegations that are found to have been malicious should be removed from personnel records and this is good practice for all employers to consider.

15. REFERENCES

References should include accurate information taken from the personnel file and individual organisations need to have appropriate consideration and procedures to cover providing information in references in relation to allegations including where sanctions are 'spent'.

In addition, for teachers, where the allegation was proven to be unsubstantiated, unfounded or malicious, information should not be included in employer references. A history of repeated concerns or allegations which have all been found to be unsubstantiated, unfounded or malicious should also not be included in any reference.

Related internal policies, procedures, guidance:

- Dispute Resolution process
- PAN Sussex Procedures

Review / Contacts / References	
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