



The
Balcarras
Trust

**Allegations
Against Staff
Policy**

Reviewing Member of Staff: Dominic Burke
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Aims

The aims of this policy are to ensure that any allegation made against a member of staff is dealt with fairly, promptly and in line with current DFE guidance.

The Trust will take seriously all allegations. In the event of a pupil making an allegation, the individual school will listen carefully to the pupil's concern and take seriously any claim and treat the allegation with due respect and thoroughness.

Procedure

In the event of an allegation being made, the school will follow the Local Authority's procedures for recording and following up the allegation. The details of these procedures can be found at the following web address:

<https://www.gscb.org.uk/i-work-with-children-young-people-and-parents/allegations-management/>

This policy should be read alongside these other following policies:

- Safeguarding
- Safeguarding and Safer Working Practice
- Child Protection

Who to Report to

Any allegations against staff should always be reported to the Headteacher of the relevant School. If the allegation is about the Headteacher, the allegation should be reported to the CEO of The Balcarras Trust.

Key Points

- If an allegation is made against a teacher the quick resolution of that allegation will be a clear priority to the benefit of all concerned. Any unnecessary delays should be eradicated.
- In response to an allegation all other options should be considered before suspending a member of staff: suspension should not be the default option. An individual should be suspended only if there is no reasonable alternative. If suspension is deemed appropriate, the reasons and justification should be recorded by the employer and the individual notified of the reasons.
- Allegations that are found to be malicious should be removed from personnel records; and any that are unsubstantiated, are unfounded or malicious should not be referred to in employer references.
- Pupils that are found to have made malicious allegations are likely to have breached school behaviour policies. The school will therefore consider whether to apply an appropriate sanction, which could include temporary or permanent exclusion (as well as referral to the police if there are grounds for believing a criminal offence may have been committed).

Duties as an employer and employee

Employers have a duty of care to their employees. They should ensure they provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended.

This policy should be used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) in the school has:

Thresholds for referral

- behaved in a way that has harmed a child, or may have harmed a child
- possibly committed a criminal offence against or related to a child or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children
- behaved or may have behaved in a way that indicates that they may not be suitable to work with children

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

Initial Considerations

The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may well either not meet the criteria set out above, or may do so without warranting consideration of either a police investigation or enquiries by local authority children's social care services. In these cases, local arrangements should be followed to resolve cases without delay. The school will ensure that local authority guidelines are always followed (see website detailed on page 1).

Some rare allegations will be so serious they require immediate intervention by children's social care services and/or police. The Local Authority Designated Officer (LADO) should be informed of all allegations that come to the school's attention and appear to meet the criteria so they can consult police and children's social care services as appropriate.

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

- **Substantiated:** there is sufficient identifiable evidence to prove the allegation
- **False:** there is sufficient evidence to disprove the allegation
- **Malicious:** there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false
- **Unfounded:** there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances
- **Unsubstantiated:** this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence

In the first instance, the headteacher or designated senior teacher (the 'case manager') should immediately discuss the allegation with the LADO. The purpose of an initial discussion is for the LADO and the case manager to consider the nature, content and context of the allegation and agree a course of action. The LADO may ask the case manager to provide or obtain relevant additional information, such as previous history, whether the child or their family have made similar allegations and the individual's current contact with children. There may be situations when the case manager will want to involve the police immediately, for example if the person is deemed to be an immediate risk to children or there is evidence of a criminal offence. Where there is no such evidence, the case manager should discuss the allegations with the LADO in order to help determine whether police involvement is necessary.

The initial sharing of information and evaluation may lead to a decision that no further action is to be taken in regard to the individual facing the allegation or concern; in which case this decision and a justification for it should be recorded by both the case manager and the LADO, and agreement reached on what information should be put in writing to the individual concerned and by whom. The case manager should then consider with the LADO what action should follow both in respect of the individual and those who made the initial allegation.

The case manager should inform the accused person about the allegation as soon as possible after consulting the LADO. It is extremely important that the case manager provides them with as much information as possible at that time. However, where a strategy discussion is needed, or police or children's social care services need to be involved, the case manager should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused. The school must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children at the school or whether alternative arrangements can be put in place until the allegation or concern is resolved. All options to avoid suspension should be considered prior to taking that step. (Please see further information on suspension below).

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 Working Together to Safeguard Children. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that teachers and other school staff are entitled to use reasonable force to control or restrain pupils in certain circumstances, including dealing with disruptive behaviour.

Where it is clear that an investigation by the police or children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the LADO should discuss the next steps with the case manager. In those circumstances, the options open to the school depend on the nature and circumstances of the allegation and the evidence and information available. This will range from taking no further action to dismissal or a decision not to use the person's services in future. Suspension should not be the default position: an individual should be suspended only if there is no reasonable alternative.

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

Supporting those Involved

The Trust has a duty of care to its staff. The individual school should act to manage and minimise the stress inherent in the allegations 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 children's social care services or the police. The individual should be advised to contact their trade union representative, if they have one, or a colleague for support.

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

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

Parents and carers should also be made aware of the prohibition on reporting or publishing allegations about teachers in section 141F of the Education Act 2002 (see below). If parents or carers wish to apply to the court to have reporting restrictions removed, they should be told to seek legal advice.

In deciding what information to disclose, careful consideration should be given to the provisions of the Data Protection Act 1998, 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, children's social care services, or the police as appropriate, should consider what support the child or children involved may need.

Confidentiality

It is extremely important that when an allegation is made, the school makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. 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 (where that identification would identify the teacher as the subject of the allegation). The reporting

restrictions apply until the point that the accused person is charged with an offence, or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation. The reporting restrictions also cease to apply if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a judge lifts restrictions in response to a request to do so. The provisions commenced on 1 October 2012.

The legislation imposing restrictions makes clear that “publication” of material that may lead to the identification of the teacher who is the subject of the allegation is prohibited. “Publication” includes “any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public”. This means that a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public). The school would take very seriously any such publication and look to take appropriate action against the person publishing the information.

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 would like to depart from that rule, e.g. an appeal to trace a suspect, they must apply to a magistrates’ court to request that reporting restrictions be lifted).

The case manager should take advice from the LADO, police and children’s social care services to agree the following:

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

Resignations and ‘compromise agreements’

If the accused person resigns, or ceases to provide their services, this should not prevent an allegation being followed up in accordance with this guidance. It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process. Wherever possible the accused should be given a full opportunity to answer the allegation and make representations about it. But the process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be substantiated on the basis of all the information available, should continue even if that cannot be done or the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person’s period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

So-called ‘compromise agreements’, by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, should not be used in these cases. 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 Disclosure and Barring Service (DBS) where circumstances require that.

Record Keeping

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

The record should be retained at least until the accused has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.

References

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

Timescales

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

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

Suspension

The possible risk of harm to children posed by an accused person should be evaluated and managed in respect of the child(ren) involved in the allegations. In some rare cases that will require the case manager to consider suspending the accused until the case is resolved. Suspension must not be an automatic response when an allegation is reported; all options to avoid suspension should be considered prior to taking that step. If the case manager is concerned about the welfare of other children in 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 be considered only in a case where there is cause to suspect a child or other children at the school is/are at risk of significant harm or the case is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically: the case manager must consider carefully whether the circumstances warrant suspension from contact with children at the school or until the allegation is resolved, and may wish to seek advice from their personnel adviser and the LADO.

The case manager should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can be resolved quickly and without the need for suspension. If the LADO, police and children's social care services have no objections to the member of staff continuing to work during the investigation, the case manager should be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternatives should be considered by the case manager before suspending a member of staff:

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

These alternatives allow time for an informed decision regarding the suspension and possibly reduce the initial impact of the allegation. This will, however, depend upon the nature of the allegation. The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated, unfounded or maliciously intended.

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

Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within one working day, giving as much detail as appropriate for the reasons for the suspension. It is not acceptable for an employer to leave a person who has been suspended without any support. The person should be informed at the point of their suspension who their named contact is within the organisation and provided with their contact details.

Children's social care services or the police cannot require the case manager to suspend a member of staff or a volunteer, although they should give appropriate weight to their advice.

Information Sharing

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

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

Children's social care services should adopt a similar procedure when making enquiries to determine whether the child or children named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer without delay.

Action following a criminal investigation or a prosecution

The police or the Crown Prosecution Service (CPS) should inform the employer and LADO immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances the LADO should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or children's social care services should inform that decision. The options will depend on the circumstances of the case and the consideration will need to take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

Action on Conclusion of a case

If the allegation is substantiated and the person is dismissed or the employer ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the LADO should discuss with the case manager and their personnel adviser whether to refer the case to the Disclosure and Barring Service (DBS) for consideration of inclusion on the barred lists; or to refer to the Teaching Agency.

There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child. In such circumstances, the duty to refer an individual to the DBS arises where an employer has removed the individual from relevant work with children or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. The DBS will consider whether to bar the person from working in regulated activity, which will include most work in schools and other educational establishments. Local authorities, schools, FE 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.

Professional misconduct cases should be referred to the relevant regulatory body and will always be reported to the CEO of The Balcarras Trust.

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The case manager should also consider how the person's contact with the child or children who made the allegation can best be managed if they are still a pupil at the school.

Learning lessons

At the conclusion of a case in which an allegation is substantiated, the LADO should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to The Trust's procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The LADO and case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

In all cases these should be reported to the CEO of The Balcarras Trust and The Trustees.

Action in respect of unfounded or malicious allegations

If an allegation is determined to be unfounded or malicious, the LADO should refer the matter to the children's social care services to determine whether the child concerned is in need of services, or may have been abused by someone else. If an allegation is shown to be deliberately invented or malicious, the Headteacher, principal or proprietor should consider whether any disciplinary action is appropriate against the pupil who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible, even if he or she was not a pupil. In September 2010 the Crown Prosecution Service published guidance for the police on harassment under the Protection from Harassment Act 1997.

Allegations Management

Concerns about a member of staff or a volunteer working with children

If a professional receives an allegation or has a concern about the behaviour of a member of staff working or volunteering with children and that concern could amount to:

1. Behaved in a way that has harmed or may have harmed a child.
2. Possibly committed a criminal offence against, or related to a child.
3. Behaved towards a child or children in a way that indicates they may pose a risk of harm to children.
4. Behaved or may have behaved in a way that indicates they may not be suitable to work with children.



Report their concerns

Report the concern to the most senior person not implicated in the allegation



Completion of written record

Complete a written record of the nature and circumstances surrounding the concern, including any previous concerns help. Include where the concern came from and brief details only.



Seek advice before proceeding – Initial Discussion

Always contact the Local Authority Designated Officer (LADO) for advice prior to investigation the allegation. This is because it might meet the criminal threshold and so your investigation could interfere with a Police or Social Care investigation.

Local Authority Designated Officer (LADO) – Tel: 01452 426994

The LADO will offer advice on any immediate action required and will assist with employment and safeguarding issues



Allegations Management November 2020

Allegations Management Process

If, after your initial discussion with the LADO, it is agreed that the allegation meets the criteria, please complete the allegation management referral form via the GSCP website. [CLICK HERE](#)

The LADO will review referrals and convene an allegations management meeting. This might result in a criminal investigation, a Social Care investigation and /or an investigation to inform whether disciplinary action is required. If it is agreed that the allegation does not meet the criteria, the LADO will record the initial discussion and send it to you for your records. Any further action will be taken within your setting if necessary.



Further Action

Further meetings might be required and these will be convened by the LADO, with your input at all times. Further information on the Allegations Management process can be found in the Government Document: Working Together to Safeguard Children 2018, Part4 Keeping Children Safe in Education and the South West Procedures.

<https://www.proceduresonline.com/swcpp/gloucestershire/contents.html>