

Safeguarding: Dealing with allegations made against staff

(Written to comply with DfE statutory guidance – Keeping children safe in education, September 2018 and Working together to safeguard children, 2018)

Introduction

This policy is to be used when managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity. These procedures apply to all staff, whether teaching, administrative, management or support, as well as to volunteers. It also applies to Proprietors and management committee members who may not be employees of the school. The word “staff” is used for ease of description.

It should be used in respect of all cases in which it is alleged that a member of staff has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

This policy relates to members of staff who are currently working at TLG or a TLG Centre, regardless of whether TLG is where the alleged abuse took place. Allegations against a member of staff who is no longer working at TLG should be referred to the police.

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. It is essential that any allegation of abuse made against a member of staff or volunteer in a TLG Centre 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 in the introduction 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, an internal investigation and where appropriate, staff disciplinary procedures should be followed to resolve cases without delay. In TLG Centres where the Partner Organisation is the Proprietor and has its own Staff Disciplinary Procedure, this is the procedure that should be followed. In TLG Centres where *TLG The Education Charity* is the proprietor, or where no local staff disciplinary procedure exists, TLG’s Staff Disciplinary Procedure should be used.

For all allegations that do meet the criteria above, the Local Authority Designated Officer (LADO) must be informed.

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

- **Substantiated:** there is sufficient evidence to prove the allegation;
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;

- **False:** there is sufficient evidence to disprove the allegation;
- **Unsubstantiated:** there is insufficient evidence to either to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

Receiving an allegation

A member of staff who receives an allegation about another member of staff from a child should follow the same guidelines as for any safeguarding concern about a child/young person. These are to:

- Listen carefully to what the young person has to say and take it seriously.
- Never investigate or take sole responsibility for a situation where a child/young person makes a disclosure.
- Always explain to children and young people that any information they have given will have to be shared with others.
- Ensure that the Lighthouse form – Safeguarding Concerns - is completed.
- Respect confidentiality and file any additional documents securely.

In addition, a member of staff receiving an allegation must:

- Ensure that the child is safe and away from the person against whom the allegation is made.
- Report it immediately to the centre-based Designated Safeguarding Lead (Head Teacher) and the person with Lead Responsibility for Safeguarding across TLG (Helen Laws). If the allegation is against the centre-based DSL, it should be reported directly to the person with Lead Responsibility for Safeguarding across TLG only. The TLG Safeguarding Lead and centre-based DSL will agree which of them will act as the 'case manager'.

Referral to the LADO

In the first instance, the 'case manager' should immediately discuss the allegation with the LADO. The LADO and the case manager will consider the nature, content and context of the allegation and agree a course of action. 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 possible 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.

If the case manager is anyone other than the TLG Safeguarding Lead, the case manager should involve the TLG Safeguarding Lead in discussions and wherever possible, keep them informed of the situation.

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.

Employers must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children at TLG 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.

If 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*.¹ 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 and college staff are entitled to use reasonable force to control or restrain children 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 employer 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. Where appropriate, staff disciplinary procedures will be followed.

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 staff, e.g. Head Teacher, TLG Safeguarding Lead, Management Committee Member.

However, in other circumstances, such as lack of appropriate resource within either TLG or the Partner Organisation, or the nature or complexity of the allegation, an independent investigator may be needed. Local authorities should be able to direct the TLG Centre to an appropriate and affordable facility for this.

Supporting those involved

Employees

Employers have a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations process. Support for the individual is vital 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. They should also be given access to welfare counselling or medical advice where this is possible.

The case manager 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. 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.

¹ [DfE Guidance – Working together to Safeguard Children, March 2015](#)

Parents or carers

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. Parents 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 footnote). If parents or carers wish to apply to the court to have reporting restrictions removed, they should be told to seek legal advice.

Child or young person

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 TLG Centre makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered.² "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.

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, for example 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;
- how to manage press interest if and when it should arise.

² 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 or college (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 State⁴⁶ 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.

Managing the situation and exit arrangements

Resignations and ‘settlement/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. **A referral to the DBS *must* be made, if the criteria are met.** If the accused person resigns or their services cease to be used and the criteria are met it will not be appropriate to reach a settlement/compromise agreement.³

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.

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.

So-called ‘settlement/compromise agreements’, by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, should not be used in cases of refusal to cooperate or resignation before the person’s notice period expires. Such an agreement will not prevent a thorough police investigation where that is appropriate.

Record keeping

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

The purpose of the record is to:

- Enable accurate information to be given in response to any future request for a reference, where appropriate.
- Provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction.
- Help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.

The record should be retained at least until the accused has reached normal 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 or malicious should not be included in employer references. A history of repeated concerns or allegations which have all been found to be false, unsubstantiated or malicious should also not be included in any reference.

³ A settlement/compromise agreement which prevents TLG from making a DBS referral when the criteria are met would be likely to result in a criminal offence being committed as TLG would not be complying with its legal duty to make the referral.

Timescales

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. Target timescales: 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
- all but the most exceptional cases should be completed within 12 months.

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

Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the employer to deal with it in line with staff disciplinary procedures, although if there are concerns about child protection, the employer should discuss them 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.

Oversight and monitoring

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

Suspension

The possible risk of harm to children posed by an accused person should be evaluated and managed in respect of the child(ren) involved in the allegations. In some rare cases that will require the case manager to consider suspending the accused until the case is resolved. Suspension should not be an automatic response when an allegation is reported; all options to avoid suspension should be considered prior to taking that step.

Suspension should be considered only in a case where there is cause to suspect a child or other children at the TLG Centre is/are at risk of harm or the case is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically.

In cases where the Proprietor is made aware that the Secretary of State has made an interim prohibition order in respect of an individual at the TLG Centre, it will be necessary to immediately suspend that person from duty pending the findings of the NCTL's investigation.

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. Based on assessment of risk, the following alternatives should be considered by the case manager and discussed with the TLG Safeguarding Lead and Management Committee before suspending a member of staff:

- redeployment within the Centre 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 TLG Centre or the Partner Church so the individual does not have unsupervised access to children;
- moving the child or children to groups 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;
- temporarily redeploying the member of staff to another role in a different location, for example to another TLG Centre, or the TLG National Support Centre.

The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended.

If immediate suspension is considered necessary, the rationale and justification for such a course of action should be agreed and recorded by both the case manager and the 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.

The power to suspend is vested in the proprietor of the TLG Centre, or Management Committee of the Centre who are the employers of staff. However, where a strategy discussion or initial evaluation concludes that there should be enquiries by the children's social care services and/or an investigation by the police, the LADO should canvass police and children's social care services for views about whether the accused member of staff needs to be suspended from contact with children. This is in order to inform the TLG Centre's consideration of suspension. Police involvement does not make it mandatory to suspend a member of staff; this decision should be taken on a case-by-case basis having undertaken a risk assessment.

Information sharing

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

Where the police are involved, wherever possible the employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process.

Specific actions

Following a criminal investigation or a prosecution

The police should inform the employer and LADO immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances the 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.

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 the school will decide to make a referral to the DBS for consideration of whether inclusion on the barred lists is required; and in the case of a member of teaching staff whether to refer the matter to the National College for Teaching and Leadership (NCTL) to consider prohibiting the individual from teaching.

There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child.

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager and TLG Safeguarding Lead 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 TLG Centre.

In respect of malicious or unsubstantiated allegations

If an allegation is determined to be unsubstantiated 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, 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.

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 TLG Centre'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.

Appendix A: Allegations against staff – Flow chart

Please refer to the TLG Policy – *Safeguarding: Dealing with allegations made against staff* for full details of these procedures.

