

Appendix 5 – Procedures for managing allegations against people who work with children

Scope

1 The framework for managing cases set out in this guidance applies to a wider range of allegations than those in which there is reasonable cause to believe a child is suffering, or is likely to suffer, significant harm. It also caters for cases of allegations that might indicate that the alleged perpetrator is unsuitable to continue to work with children in his or her present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a person who works with children has:

- behaved in a way that has harmed, 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 s/he is unsuitable to work with children.

2 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 an employer¹ of disciplinary action in respect of the individual.

Supporting those involved

3 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 14 below). They should also be kept informed about the progress of the case, and told the outcome where there is not a criminal prosecution. That includes the outcome of any disciplinary process.

Note: the deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but those concerned should be told the outcome.²

4 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 The employer should also keep the person who is the subject of the allegations informed of the progress of the case, and arrange to provide appropriate support to the individual while the case is ongoing. (That support may be provided via occupational health or employee welfare arrangements where those exist.) If the person is suspended, the employer should also make arrangements to keep

¹ For convenience, the term 'employer' is used throughout this guidance to refer to organisations that have a working relationship with the individual against whom the allegation is made. This includes organisations that use the services of volunteers or people who are self-employed, as well as service providers, voluntary organisations, employment agencies or businesses, contractors, fostering services, regulatory bodies such as Ofsted in the case of childminders, and others that may not have a direct employment relationship with the individual, but will need to consider whether to continue to use the person's services, or to provide the person for work with children in future, or to deregister the individual.

Note: in some circumstances, the term 'employer' for these purposes encompasses more than one organisation – e.g. where staff providing services for children in an organisation are employed by a contractor, or where temporary staff are provided by an agency. In those circumstances, both the contractor or agency and the organisation in which the accused individual worked need to be involved in dealing with the allegation.

² 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 p241

the individual informed about developments in the workplace. As noted in paragraph 15, if the person is a member of a union or professional association, they should be advised to contact that body at the outset.

Confidentiality

6 Every effort should be made to maintain confidentiality and guard against publicity while an allegation is being investigated/considered. In accordance with ACPO guidance, the police do 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’

7 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 co-operate 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 co-operate. 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.

8 By the same token, so-called ‘compromise agreements’ – by which a person agrees to resign, 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. In any event, such an agreement will not prevent a thorough police investigation where appropriate, nor can it override an employer’s statutory duty to make a referral to the Protection of Children Act List or DfES List 99 where circumstances require that (see paragraphs 12.29 and 12.33 respectively).

Record-keeping

9 It is important that employers keep a clear and comprehensive summary of any allegations made, details of how the allegations were followed up and resolved, and of any action taken and decisions reached. These should be kept in a person’s confidential personnel file and a copy should be given to the individual. Such information should be retained on file, including for people who leave the organisation, at least until the person reaches normal retirement age, or for 10 years if that is longer. The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where a future CRB Disclosure reveals information from the police that an allegation was made but did not result in a prosecution or a conviction. It will also prevent unnecessary re-investigation if, as sometimes happens, allegations resurface after a period of time.

Timescales

10 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. These 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 allegations, but they provide useful targets to aim for that are achievable in many cases.

Oversight and monitoring

11 LSCB member organisations, county-level and unitary local authorities and police forces should each have officers who fill the roles described in paragraphs 6.23 and 6.24.

12 Other employers' procedures should identify a senior manager within the organisation to whom allegations or concerns that a member of staff or volunteer may have abused a child should be reported. Procedures should make sure that all staff and volunteers know who that person is. The procedures should also identify an alternative person to whom reports should be made in the absence of the named senior manager, or in cases where that person is the subject of the allegation or concern. The procedures should include contact details for the LA designated officer responsible for providing advice and liaison and monitoring the progress of cases, to ensure that cases are dealt with as quickly as possible, consistent with a fair and thorough process.

Initial considerations

13 Procedures need to be applied with common sense and judgement. Some allegations are so serious as to require immediate referral to social care and the police for investigation. Others are much less serious, and at first sight may not seem to warrant consideration of a police investigation or enquiries by children's social care. However, it is important to ensure that even apparently less serious allegations are seen to be followed up, and that they are examined objectively by someone independent of the organization concerned. Consequently, the LA designated officer should be informed of all allegations that come to the employer's attention and appear to meet the criteria in paragraph 1, so that s/he can consult police and social care colleagues as appropriate. The LA 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.

14 The LA designated officer should first establish, in discussion with the employer, that the allegation is within the scope of these procedures (see paragraph 1) and may have some foundation. 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 LA officer should consult those colleagues about how best to inform parents. However, in some circumstances an employer may need to advise parents of an incident involving their child straight away – e.g. if the child has been injured while in the organisation's care and requires medical treatment.

15 The employer should inform the accused person about the allegation as soon as possible after consulting the LA designated officer. However, where a strategy discussion is needed, or it is clear that police or children's social care may need to be involved, that should not be done 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 seek support from that organisation.

16 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 paragraph 5.54. Note: in these cases the strategy discussion should include a representative of the employer (unless there are good reasons not to do that) and should take account of any information the employer can provide about the circumstances or context of the allegation.

17 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 LA designated officer should nevertheless conduct a similar discussion with the police, the employer, and

any other agencies involved with the child to evaluate the allegation and decide how it should be dealt with.

(Note: 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 that can be taken forward in a disciplinary process in parallel with the criminal process, or whether any disciplinary action needs to wait for completion of the police enquiries and/or prosecution.

18 If the complaint or allegation is such that it is clear that investigations by police and/or enquiries by social care are not necessary, or the strategy discussion or initial evaluation decides that this is the case, the LA designated officer should discuss next steps with the employer. In such circumstances, options open to the employer range from taking no further action, to summary dismissal or a decision not to use the person's services in future. The nature and circumstances of the allegation and the evidence and information available determine which of the range of possible options is most appropriate.

19 In some cases, further investigation is needed to enable a decision about how to proceed. If so, the LA designated officer should discuss with the person's employer how and by whom the investigation will be undertaken. The investigation should normally be undertaken by the employer. However, in some circumstances appropriate resources may not be available in the employer's organisation, or the nature and complexity of the allegation might point to the employer commissioning an independent investigation.

Suspension

20 The possible risk of harm to children posed by an accused person needs to be evaluated and managed effectively – 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 this requires the employer to consider suspending the person. 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. People must not be suspended automatically or without careful thought. Employers must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children until the allegation is resolved.

Note: neither the LA, nor the police, nor children's social care can require an employer to suspend a member of staff or a volunteer. The power to suspend is vested in the employer alone. However, where a strategy discussion or initial evaluation discussion concludes that there should be enquiries by social care and/or an investigation by the police, the LA designated officer should canvass police/social care views about whether the accused member of staff needs to be suspended from contact with children, to inform the employer's consideration of suspension.

Monitoring progress

21 The LA designated officer should regularly monitor the progress of cases, either via review strategy discussions, or by liaising 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.

22 If the strategy discussion or initial evaluation decides that a police investigation is required, the police should set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) to consider 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 action meeting. Dates for subsequent reviews, at fortnightly or monthly intervals, should be set at the meeting if the investigation continues.

Information sharing

23 In the initial consideration at a strategy discussion or joint evaluation, the agencies concerned – including the employer – should share all relevant information they have about the person who is the subject of the allegation and about the alleged victim.

24 Wherever possible, the police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the employer, and/or regulatory body, for disciplinary purposes. This should be done as the investigation proceeds rather than after it is concluded, to enable the police and CPS to share relevant information without delay at the conclusion of their investigation or any court case.

25 Children's social care 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 that is relevant to a disciplinary case can be passed to the employer or regulatory body without delay.

Action following a criminal investigation or a prosecution

26 The police or the CPS should inform the employer and LA 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 LA designated officer should discuss with the employer whether any further 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. Action by the employer, including dismissal, is not ruled out in any of those circumstances. The range of options open depends on the circumstances of the case, and the consideration needs to take into account the result of the police investigation or trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

Action on conclusion of a case

27 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/her services, the LA designated officer should discuss with the employer whether a referral to the Protection of Children Act List or DfES List 99 is required or advisable, along with the form and content of a referral. Also, if the person is subject to registration or regulation by a professional body or regulator – e.g. by the General Social Care Council, General Medical Council, OFSTED, etc. – the designated officer should advise on whether a referral to that body is appropriate.

28 If it is decided on conclusion of the case that a person who has been suspended can return to work, the employer 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 employer 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 in the workplace.

Learning lessons

29 At the conclusion of a case in which an allegation is substantiated, the employer should review the circumstances of the case to determine whether there are any improvements to be made to the organisation's procedures or practice to help prevent similar events in the future.

Action in respect of false or unfounded allegations

30 If an allegation is determined to be unfounded, the employer 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 police should be asked to consider whether any action might be appropriate against the person responsible.

Summary of process

Allegation made to employer

31 The allegation should be reported to the senior manager identified in the employer's procedure immediately, unless that person is the subject of the allegation, in which case it should be reported to the designated alternative.

32 If the allegation meets any of the criteria set out in paragraph 1, the employer should report it to the LA designated officer within one working day.

Allegation made to the police or children's social care

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

Initial consideration

34 The LA designated officer will discuss the matter with the employer and, where necessary, obtain further details of the allegation and the circumstances in which it was made. The discussion should also consider whether there is evidence/information that establishes that the allegation is false or unfounded.

35 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 LA designated officer will immediately refer to children's social care and ask for a strategy discussion to be convened straightaway. In those circumstances, the strategy discussion should include the LA designated officer and a representative of the employer.

36 If there is no cause to suspect that 'significant harm' is an issue, but a criminal offence might have been committed, the LA 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 employer.

Action following initial consideration

37 Where the initial evaluation decides that the allegation does not involve a possible criminal offence, it is dealt with by the employer. In such cases, if the nature of the allegation does not require formal disciplinary action, appropriate action should be instituted **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**.

38 Where further investigation is required to inform consideration of disciplinary action, the employer should discuss who will undertake that with the LA 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 employer or the person's line management to ensure objectivity. In any case, the investigating officer should aim to provide a report to the employer **within 10 working days**.

39 On receipt of the report of the disciplinary investigation, the employer should decide whether a disciplinary hearing is needed **within two working days**, and if a hearing is needed it should be held **within 15 working days**.

40 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 employer should take account of any relevant information obtained in the course of those enquiries when considering disciplinary action.

41 The LA designated officer should continue to liaise with the employer to monitor progress of the case and provide advice/support when required or requested.

Case subject to police investigation

42 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 evaluation, and if the decision is to continue to investigate the allegation, dates for subsequent reviews 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.)

43. 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 pass all information they have which may be relevant to a disciplinary case to the employer without delay. In those circumstances the employer and the LA designated officer should proceed as described in paragraphs 37–41.

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

Referral to PoCA list or regulatory body

45 If the allegation is substantiated, and on conclusion of the case the employer dismisses the person or ceases to use the person's services, or the person ceases to provide his/her services, the employer should consult the LA designated officer about whether a referral to the PoCA list and/or to a professional or regulatory body is required. If a referral is appropriate, the report should be made within one month.