

# **Handling Allegations of Abuse made against Adults who Work with Children and Young people**

## **PRACTICE GUIDANCE**

May 2009

## Contents

	<b>Page</b>
<b>Section 1: Overview</b>	<b>4</b>
Introduction	4
Statutory framework	4
Underlying principles	5
<b>Section 2: Using the Guidance</b>	<b>6</b>
Target audience	6
Key roles	6
Links with other documents	8
<b>Section 3: Practice Issues</b>	<b>9</b>
The responsibility to safeguard children and young people	9
Exercising professional judgement	9
Confidentiality and information-sharing	9
Record-keeping	10
<b>Section 4: The Process</b>	<b>12</b>
Using the procedures	12
Process flowchart	13
<u>Stage 1: The Manager's initial response</u>	13
When to contact the Local Authority Designated Officer (LADO)	14
<u>Stage 2: Discussion with LADO</u>	15
Initial discussion	15
Use of suspension	15
Agreeing next actions	16
Confidentiality during investigations	16
<u>Stage 3: Role and function of multi-agency meetings</u>	17
S47 Strategy Meeting	17
Joint Evaluation Meeting	19
<u>Stage 4: Employer's actions</u>	19
When is employer's action necessary?	19
Decision to undertake a disciplinary investigation	20
The disciplinary investigation	20
When a specialist assessment is necessary	21
Consideration of evidence	21
Support for child/family	22
Support for the individual	22
<b>Section 5: Referral to the Independent Safeguarding Authority</b>	<b>24</b>
The duty to refer	24
List 99 and POCA	24
Decision to make a referral	25
Who should make the referral	26
How to make a referral	26

<b>Section 6: Role for LSCBs</b>	<b>27</b>
Challenging Practice	27
Monitoring and reporting	27
<b>Section 7: Further Information</b>	<b>28</b>
<b>Annexes</b>	
Annex A: Definitions	29
Annex B: Roles and responsibilities	32
Annex C: Structure for supporting the management of allegations of abuse against staff and volunteers	36
Annex D: Record keeping	37
Annex E: Information sharing	40
Annex F: Suspension	42
Annex G: Undertaking a Specialist Assessment - Guidance Notes, Commissioning Template and Assessment Report Template	44
Annex H: Specialist Assessment Flowchart	56

## Section One: Overview

### Introduction

1. When allegations arise against a person working with children the employer should follow the procedures outlined in *Working Together to Safeguard Children* (2006).<sup>1</sup> The procedures should be used when an allegation is made that an adult 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. This document provides additional practice guidance to employers and Local Authority Designated Officers (LADOs) when allegations are made and/or management concerns arise. It does not replace or take priority over any aspect of employment law.

### Statutory framework

3. *Working Together to Safeguard Children* provides guidance about how to manage allegations against adults working with children and young people. It provides a framework for managing a wider range of allegations than those in which there is a reasonable cause to believe a child is suffering, or is likely to suffer, significant harm. It also covers cases of allegations that might indicate that a person is unsuitable to continue to work with children in his or her present position, or in any capacity.

4. *Working Together* states that:

- All Local Safeguarding Children Boards (LSCBs) have responsibility for ensuring that there are effective inter-agency procedures in place for dealing with allegations against people who work with children.<sup>2</sup>
- All organisations that provide services for children or provide staff or volunteers to work with or care for children should operate a procedure for handling such allegations that is consistent with guidance<sup>3</sup> and should identify a senior manager within the organisation to whom all allegations or concerns are reported.<sup>4</sup>

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<sup>1</sup> Working Together to Safeguard Children: (HM Government; 2006)

<sup>2</sup> Working Together, Chapter 6 Paragraph. 20

<sup>3</sup> Working Together, Chapter 6 Paragraph 22

<sup>4</sup> Working Together, Appendix 5 Paragraph 12

## **Underlying principles**

- The welfare of the child is paramount.<sup>5</sup>
- Adults about whom there are concerns should be treated fairly and honestly and should be provided with support.
- It is the responsibility of all adults to safeguard and promote the welfare of children and young people. This responsibility extends to a duty of care for those adults employed, commissioned or contracted to work with children and young people.

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<sup>5</sup> Children Act 1989

## Section Two: Using the Guidance

### Target audience

5. This guidance is intended for all employers<sup>6</sup> providing services to children and young people; it relates to all adults working with children and young people, whether in a paid or voluntary position. It is intended to assist organisations with the interpretation and application of guidance in *Working Together* concerning the management of allegations against staff.

6. It is not possible within a single document to differentiate between the many different providers of services to children and their related professional languages. Individual organisations or professions, therefore, may need to adapt the terminology used when applying this guidance to their own circumstances. A list of definitions used in this guidance is contained in Annex A.

### Key roles

7. *Working Together* identifies three key roles essential to an effective process for managing allegations: the Named Senior Officer (NSO), the Local Authority Designated Officer (LADO) and the Senior Manager (SM).

#### Named Senior Officer (NSO)

8. All LSCB member organisations should have a named senior officer with *overall* responsibility for:

- ensuring that their organisation operates procedures for dealing with allegations in accordance with the guidance in Appendix 5 of *Working Together*;
- resolving any inter-agency issues; and
- liaising with the LSCB on the subject.

#### Local Authority Designated Officer (LADO)

9. This role relates to the management and oversight of individual cases. The LADO should:

- provide advice and guidance to employers and voluntary organisations;
- liaise with the police; and

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<sup>6</sup> The term employer refers to all organisations which have a working relationship with the individual against whom the allegation is made. This includes organisations that use the services of volunteers, or the self employed as well as service providers, voluntary organisations, agency or contracted staff, fostering services and regulatory bodies such as OfSTED in the case of child minders.

- monitor the progress of all cases to ensure that they are dealt with as quickly and consistently as possible through the use of a fair and thorough process.

### Senior Manager within the organisation (SM)

10. The Senior Manager within the organisation is the senior person to whom all allegations or concerns are reported and has *overall* responsibility for:

- ensuring procedures are properly applied and implemented; and
- providing advice, information and guidance for staff within the organisation.

11. More detailed examples of the responsibilities attached to these three roles are set out in Annex B.

12. It is critical that the relationship between the LADO and the Senior Manager is clear to all LSCB member organisations. The LADO should act independently of any organisation involved in the allegation concerned.

### **Different approaches to the LADO role**

As long as the responsibilities associated with the LADO role are carried out, and it is clear who the LADO contacts are for the area, it is acceptable for the Local Authority, in partnership with LSCB, to decide how best to divide up the work.

Some examples of different approaches taken:

#### **North-west**

In one authority, the LADO is a half time post which has moved from the Social Care team to be placed in the Quality Assurance team. This was to convey to member agencies that the post was a multi-agency role and not one which was attached to social care. In another authority, the LADO post has only recently been established but they are considering whether the post holder should sit with the LSCB Business Manager and Trainer.

Another authority has LSCB backing to allocate the LADO responsibilities to the existing Safeguarding team, but has appointed a full time senior practitioner to undertake some broader development tasks related to the LADO post, including supporting, and even undertaking, investigative duties relating to disciplinary processes

In other authorities, the more usual arrangements are in place with the LADO sitting in the Safeguarding team within Children's Services.

#### **South-West**

A large shire county in the south west initially identified one LADO for the whole county, but soon realised that managing referrals on a county-wide basis with limited time and resources was problematical and so they now have several locality based LADOs co-ordinated by the Named Senior Officer in the authority.

Where aspects of children's services re-organisation coincided with the implementation of the LADO role, 2 authorities allocated the LADO role to Education Safeguarding Officers, who already had significant experience of managing allegations in schools, at the same time as their integration into newly formed Safeguarding Units.

### **Links with other documents**

13. This is intended to be a generic document that should complement existing professional procedures, protocols and guidance which relate to specific roles, responsibilities or professional practices. It should be read in conjunction with:

- *Working Together to Safeguard Children (2006)*<sup>7</sup>
- *Safeguarding Children and Safer Recruitment in Education(2006)*<sup>8</sup>
- *Guidance for Safer Working Practice for Adults who Work with Children and Young People(2007)*<sup>9</sup>
- Local Safeguarding Children Board procedures and protocols.

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<sup>7</sup> <http://www.everychildmatters.gov.uk/safeguarding/>

<sup>8</sup> <http://www.teachernet.gov.uk/wholeschool/familyandcommunity/childprotection/>

<sup>9</sup> <http://www.everychildmatters.gov.uk/resources-and-practice/IG00311/>



## Section Three: Practice Issues

### **The responsibility to safeguard children and young people**

14. Safeguarding children is everybody's responsibility. All employers have a responsibility to set personal and professional boundaries for their staff and to be explicit about what behaviour is unacceptable and will impact on their employment.

### **Exercising professional judgement**

15. Throughout the process for managing allegations or concerns, senior managers will need to exercise their professional judgement. Making such judgements about someone's behaviour is a difficult and complex process. It is important therefore that managers:

- consult appropriately
- acknowledge any lack of expertise or information
- keep an open mind until a conclusion is reached
- consider other options or alternatives
- know and act in accordance with the law
- know and apply appropriate procedures
- consider appropriate guidance
- take account of all relevant factors
- give each factor appropriate weight
- apply the duty of care

16. There will be occasions when a specialist assessment of the person's behaviour is required (see paragraph 61). In these circumstances the recommendations of a person skilled and experienced in undertaking such assessments should inform any professional judgements which are subsequently made.

### **Confidentiality and information-sharing**

17. Information sharing is vital to safeguarding and promoting the welfare of children and young people.

18. The Data Protection Act and the Human Rights Act are the two main legislative frameworks governing how, what and in what circumstances information may be shared.

19. Disclosure of information to safeguard children is supported by the Children Act 1989 and *Working Together*, and by application of the welfare principle. Additionally, there are clauses within both the Data Protection and Human Rights legislation which allow for information to be shared:

- for the protection of health and morals
- for the protection of the rights and freedoms of others
- for the prevention and detection of crime

20. Disclosure of any confidential information should always be appropriate for the purpose and only to the extent necessary to achieve that purpose.

21. Annex E gives more detailed guidance on information sharing.

22. Further guidance on information sharing for children's services can be found in: *Information sharing: Practitioners' guide* (April 2006). This can be downloaded from the Every Child Matters website at:  
<http://www.everychildmatters.gov.uk/deliveringservices/informationsharing/>

### **Record-keeping**

23. Record keeping is an integral part of the management of allegations. Complete and accurate records will need to contain information which provides comprehensive details of:

- Events leading to the allegation or concern about an adult's behaviour
- The circumstances and context of the allegation
- Professional opinions
- Decisions made and the reasons for them
- Action that is taken
- Final outcome

24. Employers, managers and officers who are involved in the process of managing allegations should follow the principles of record-keeping contained within the Data Protection Act 1988, the Human Rights Act 1998 and the Freedom of Information Act 2002.

25. It is important for those keeping records of allegations against adults who work with children to remember that part one of *Working Together to Safeguard Children* is statutory<sup>10</sup> guidance<sup>11</sup> for local authorities, but should

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<sup>10</sup> Therefore, local authorities must take the guidance into account and, if they decide to depart from it, have clear reasons for doing so.

<sup>11</sup> Page 140 *Working Together*, guidance on record keeping

also be followed as good practice by other employers.

26. *Working Together* states:

“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.”<sup>12</sup>

27. Section 4 of this guidance covers what to record at different stages of the process, and further information is contained in Annex D. Further advice and guidance on the employment practice code can be found at the Information Commissioner’s office website at: [www.ico.gov.uk](http://www.ico.gov.uk). Employers must also have regard to the ACAS Code of Practice for Discipline and Grievance – [www.acas.gov.uk](http://www.acas.gov.uk)

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<sup>12</sup> Page 241 *Working Together*, Appendix 5: Procedures for managing allegations against people who work with children

## Section Four: The Process

### Using the procedures

28. All those involved in the management of allegations should be familiar with the process which must be followed for considering information arising from an allegations or concern about the behaviour of an adult working with children. This can be found in Appendix 5 of *Working Together* (and Chapter 5 of *Safeguarding Children and Safer Recruitment in Education*).

29. The process of managing allegations starts where information comes to the attention of a manager which suggests that an adult working with children may have:

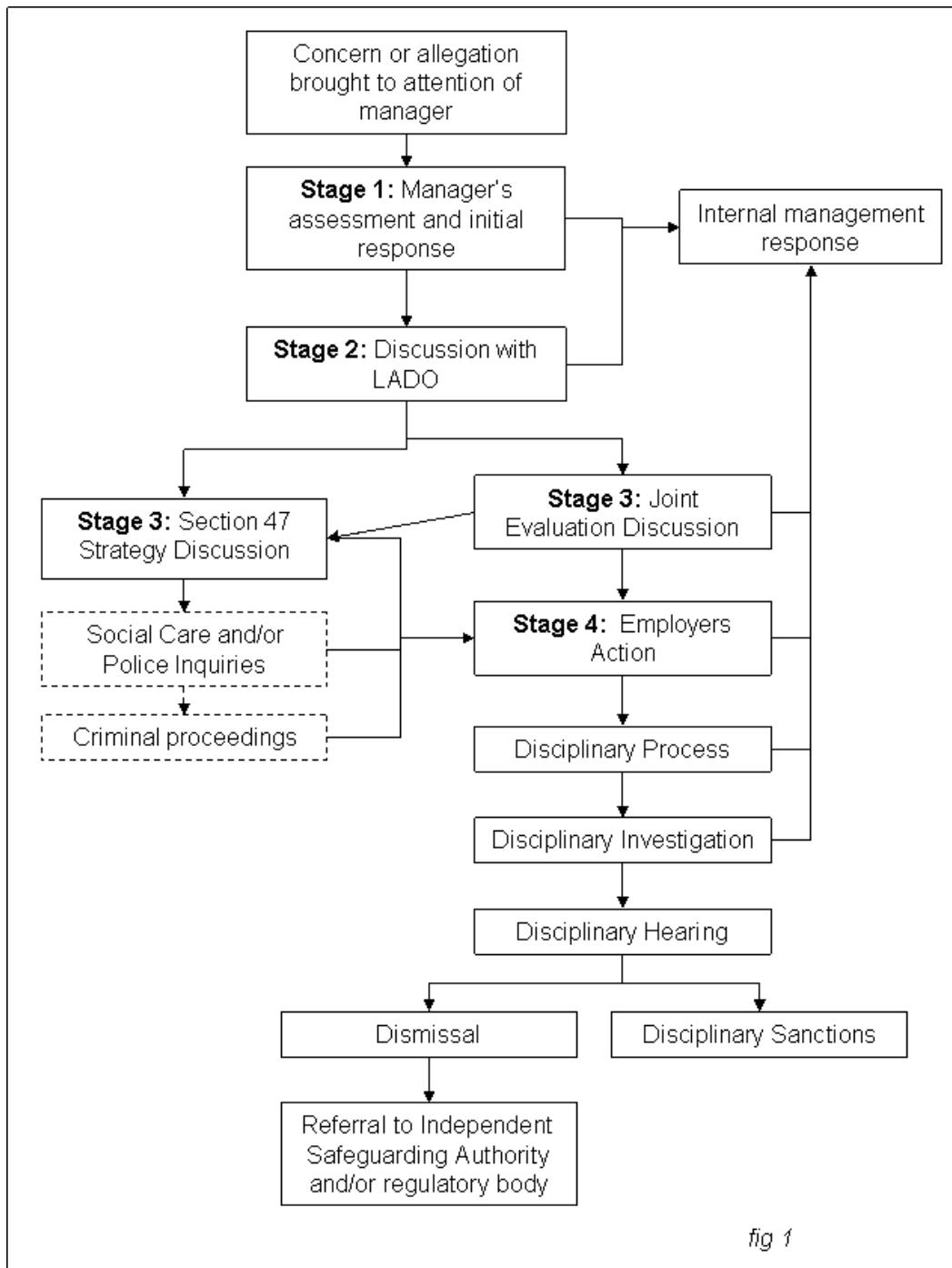
- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he/she is unsuitable to work with children.

30. Concerns or allegations about the behaviour of an adult may be brought to the attention of a manager in a variety of ways. For example:

- an allegation made directly by a child or parent;
- an allegation made by a colleague or member of staff;
- information from police or local authority social care;
- information from a third party or the general public;
- information disclosed anonymously or online; or
- concerns generated through an employment relationship.

31. The procedures allow for consideration of the adult's behaviour at the earliest opportunity when a concern or allegation arises and is brought to the manager/employer's attention.

32. Where there is no employer, the allegation should nevertheless be brought to the attention of the LADO and the process described below be followed.



### Stage 1: The Manager's initial response

33. Managers need to understand which behaviours to address directly through their complaints or disciplinary procedures and under what circumstances they should contact the Local Authority Designated Officer.

34. What constitutes appropriate or inappropriate behaviour will vary depending upon the context and nature of the work undertaken. All employers have a responsibility to set personal and professional boundaries for their staff and to be explicit about what behaviours are illegal, inappropriate or unacceptable.

## When to contact the Local Authority Designated Officer (LADO)

35. *Working Together* states that: '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 organisation concerned.' (Appendix 5 Paragraph 13).

36. Discussion should always take place between the employer and the LADO when the concern or allegation meets the criteria in *Working Together*.

### What to record

At this stage the manager should ensure that a factual account of the allegation is recorded, dated and signed, a chronology of events initiated and any other key information identified. No attempts should be made to investigate further before discussion with the LADO.

37. Employers may also seek the advice of the LADO where an employee's behaviour is a matter for concern to his/her manager because it compromises or may be seen to comprise the reputation and ability of the organisation to safeguard children and young people. Some examples of this may be where an individual has:

- contravened or has continued to contravene any safe practice guidance given by his/her organisation or regulatory body
- exploited or abused a position of power
- acted in an irresponsible manner which any reasonable person would find alarming or questionable given the nature of work undertaken
- demonstrated a failure to understand or appreciate how his or her own actions or those of others could adversely impact upon the safety and well being of a child
- demonstrated an inability to make sound professional judgements which safeguard the welfare of children
- failed to follow adequately policy or procedures relating to safeguarding and promoting the welfare of children
- failed to understand or recognise the need for clear personal and professional boundaries in his or her work
- behaved in a way in her or her personal life which could put children at risk of harm
- become the subject of criminal proceedings not relating to a child
- become subject to enquiries under local child protection procedures

- behaved in a way which seriously undermines the trust and confidence placed in him or her by the employer.

## **Stage 2: Discussion with LADO**

### **Initial discussion**

38. The purpose of an initial discussion is for the LADO and the Senior Manager to consider the nature, content and context of the allegation and agree a course of action.

39. The LADO may ask the senior manager to provide or obtain any additional information which may be relevant, such as previous history, whether the child/family have made similar allegations, and current contact with children.

40. This 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, and the manager will then decide how best to proceed within their organisation.

41. For all other cases, the discussion will then focus on agreeing a course of action including deciding whether the information meets agreed thresholds to hold a strategy meeting under child protection procedures<sup>13</sup>, and whether suspension of the adult is appropriate. The LADO should canvass the views of police and/or children's social care as to whether the member of staff should be suspended from contact with children. The power to suspend rests with the employer<sup>14</sup> alone and it cannot be required by another agency, although the employer should have regard to the views of investigative agencies if involved.

### **Use of suspension**

42. *Working Together* states that suspension should be considered in every case where:

- there is cause to suspect a child is at risk of significant harm;
- the allegation warrants investigation by the police, or
- the allegation is so serious that it might be grounds for dismissal

43. Suspension should not be seen as an automatic response to an allegation or imposed as a 'knee jerk action'. A decision to suspend without careful thought could impede a police investigation (see case study A). In some cases it will not be immediately obvious that suspension is appropriate

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<sup>13</sup> Section 47 of the Children Act 1989 places a duty on every local authority to make enquiries when it has reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer significant harm.

<sup>14</sup> In maintained schools and colleges, the head teacher/principal can suspend any member of staff and the governing body can suspend the head teacher/principal

and the need for this course of action may only become clear after information has been shared with, and discussion had, with other agencies and the employer's Human Resources provider.

44. Further information on issues to consider around suspension is contained in Annex F.

#### **Case study A – Suspension impeding police investigation**

An employee was reported to possess indecent photographs of children. The employer made the decision to suspend without consulting the LADO or other agencies. The employee went home and destroyed all the evidence, damaging the chances of a subsequent conviction. If the LADO had been involved in the initial decision, he or she would have considered the need for police involvement and acted accordingly.

#### **Agreeing next actions**

45. In some cases further consultation by the LADO will take place. The LADO may decide to consult with police and social care colleagues to determine the next course of action.

46. If the information given about an adult's behaviour does not require a strategy meeting under Section 47, a similar meeting should be called to evaluate jointly the level of concern and to determine whether the person's suitability to continue working with children in his or her current position has been called into question.

47. If, following consultation, it is decided that the allegation does not meet any of the criteria above, then it may be dealt with by the employer at organisational level.

48. The process which follows the initial consultation with the LADO is made clear in Appendix 5 of *Working Together*. This explains that the LADO will retain overall management of the process (including the monitoring of cases which have been referred back to the employer for internal resolution) until the case reaches its conclusion and will ensure that accurate records are kept.

#### **Confidentiality during investigations**

49. During an investigation, the employer and LADO have a responsibility to safeguard confidentiality as far as is possible. Sensitive information must only be disclosed on a need to know basis to other professionals involved in the investigative process. Confidentiality should be maintained by those professionals dealing with the allegation, but if other people become aware of the allegation they may not feel bound to maintain confidentiality. Therefore consideration should be given as to how best to manage this, particularly in relation to who should be told, what information can be disclosed, when and how.



50. The employer should consider carefully and, together with the LADO, should keep under review decisions as to who else should be informed of any suspension and/or investigation, e.g. senior members of staff, and to what extent confidentiality can or should be maintained according to the circumstances of a particular case. The LADO should seek advice from the police and children's social care as appropriate.

#### **What to record**

In reaching a judgement on an allegation the Senior Manager and LADO, in consultation with other professionals as appropriate, should specify and record their concerns clearly indicating why the behaviour may be inappropriate and identifying any potential risk to a child. A written record of this discussion and the agreed outcomes should be made by the LADO and shared with the senior manager. The employee should be informed of the outcome in writing subject to any multi-agency recommendations to the contrary.

### **Stage 3: Role and function of multi agency meetings**

#### **S47 Strategy Meeting**

51. If from the information received the LADO decides that the threshold for harm has been met, or that a criminal act has taken place, or that the person's behaviour may indicate that he/she is unsuitable to work with children or young people, the LADO will liaise with key agencies to organise a strategy discussion.

52. If a strategy discussion is decided on, then it should take the form of a face-to-face meeting wherever possible. It is important that the employer is represented. Other than in exceptional cases, this would normally be the Senior Manager and the meeting should include a representative from the employer's HR service (where applicable). It is also recommended that police, social care and any other agencies or organisations involved should be present.

53. The strategy discussion should:

- share all relevant information about the allegation in question.
- discuss any previous allegations or other concerns.
- review the need for involvement of children's social care or the police.
- consider whether the person's suitability to continue working with children in his or her current position has been called into question.
- plan any enquiries needed, allocate tasks and set timescales.
- identify a lead contact manager within each agency.

- decide what information can be shared with whom and when.
- agree timescales for actions and/or dates for further meetings.
- consider what advice and support should be made available to the member of staff and child/family.
- consider any other factors that may affect the management of the case e.g. media interest, managing confidentiality.
- where the allegation relates to an individual who is not an employee, the meeting should determine who will take the lead in any subsequent action.

54. Those invited to participate in the strategy meeting are advised to bring all relevant information including:

- relevant details of the employee and the child and their family.
- information and contact details of any possible witnesses.
- any other relevant concerns or employment issues regarding the employee.

#### **What to record**

It is important that comprehensive minutes are taken of all the discussions and agreed outcomes. Consideration should be given to who is the most appropriate person to take minutes of the meeting. Where possible it would be advisable for the minute-taker to be independent of the discussion and able to co-ordinate distribution of the minutes. This would avoid the possibility of aspects of the discussion not being fully recorded.

The meeting should ensure that, where there is a decision not to pursue any police or social care enquiries, specific consideration is given as to why the alleged behaviour is of concern to those present. This discussion should be clearly recorded.

The chair should decide to whom the minutes should be distributed. This should include participants in the strategy meeting and those invited but not attending. All parties should be reminded of the need to maintain confidentiality in accordance with local and national procedures and guidance.

#### **Strategy meeting – minimising delays**

If the arranged strategy meeting has all the relevant agencies round the table, then once the child's needs have been discussed, the second part of the meeting (or a second consecutive meeting, allowing people to leave) should be used to discuss what should happen to the alleged member of staff, rather than setting up a separate meeting for this at a later date.

## Joint Evaluation Meeting

55. If the information about an adult's behaviour does not require a strategy meeting under Section 47 to be held, then a similar meeting should nonetheless be called to evaluate jointly the level of concern and to determine whether, and if so how, the behaviour has called into question the person's suitability to continue working with children in her or her current position.

56. In consultation with the LADO the employer will decide whether further disciplinary investigation is necessary and whether there is a need to suspend the adult, or whether suitable alternatives to suspension should be used.

57. Where the allegation relates to an individual who is not an employee, the meeting should determine who will take the lead in any subsequent action.

### What to record

Careful records must be maintained similar to those produced by a strategy meeting (see above).

### Agreeing on confidentiality at meetings

In allegation management it is vital to maintain confidentiality for the family and the staff member. Some local authorities have an agreed "need to know" approach to information-sharing that is set out in a protocol. Alternatively, using a set agenda for strategy meetings which includes consideration of confidentiality and support services for family and members of staff can be a good way of ensuring the need for confidentiality is discussed for every case.

## Stage 4: Employer's Actions

### When is employer's action necessary?

58. Further action by the employer will always be required in circumstances where:

- a multi-agency meeting<sup>15</sup> has concluded that disciplinary action should be considered by the employer;
- the matter has been referred to the employer after the police or Crown Prosecution Service (CPS) has determined that a charge or prosecution may not be appropriate; or
- following the conclusion of legal proceedings.

<sup>15</sup> This may be a strategy meeting or joint evaluation meeting.

## **The decision to undertake a disciplinary investigation**

59. The decision to instigate disciplinary procedures will be based upon the nature and seriousness of the behaviour which has been brought to the multi-agency discussion for consideration and, additionally, in those circumstances where a child has made a direct allegation, upon the child's account of the adult's behaviour. In such cases, it may be necessary to gather further information from the child or other child witnesses to establish the need for an investigation and this should be arranged to be undertaken by a social worker or other professional experienced in conducting interviews with child witnesses.

## **The disciplinary investigation**

60. Where it is agreed that a disciplinary investigation will take place an investigating officer must be nominated and timescales agreed with the LADO who will retain overall responsibility to monitor the progress of the investigation and provide advice and support when required or requested.

61. The investigating officer, usually in partnership with the senior manager and the LADO, should identify the scope of the investigation, whether a specialist assessment is advisable given the nature of the concern and to what extent the behaviour calls into question the suitability of the individual to continue within his or her present employment. The employer should again consider whether there is a need to suspend the adult while the investigation takes place.

62. The officer should approach the investigation on the basis of an objective fact-finding exercise<sup>16</sup>. The process must be robust, well informed and ensure the most rigorous standards for safeguarding children are observed, whilst at the same time ensuring the balance of justice and fairness for the employee.

63. The recorded views of the LADO and/or other professionals consulted as part of the strategy discussion/joint evaluation meeting should be taken into account.

64. Evidence must be gathered which establishes, on the balance of probabilities, what behaviour or incident led to the allegation or concern. In those cases where a disciplinary investigation follows an initial criminal investigation prior agreement should have been reached that witness statements taken by the police will be shared with the employer for use in potential disciplinary processes.

65. If the criminal investigation has resulted in a charge, it may be necessary for court transcripts to be included within the disciplinary evidence.

66. When a criminal investigation has not been initiated and no witness statements are available, advice should be taken from the LADO with regard

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<sup>16</sup> Harding v Hampshire County Council

to obtaining and using child witness statements.

67. At the conclusion of the disciplinary investigation the employer must form a view about whether there are grounds on which the behaviour of the individual should be considered within a disciplinary hearing.

68. Where no case for a hearing has been established the employer should discuss with the LADO what options would be appropriate to support the member of staff (and the child concerned if this applies.)

### **When a specialist assessment is necessary**

69. A specialist assessment of the adult's behaviour which is deemed to be inappropriate, or in contravention of the expected behaviours of the organisation, should be commissioned by the employer when it is the view of the LADO and other professionals that this is required or desirable in order to assess any risk posed to children. Annex G contains further guidance on undertaking a specialist assessment including a commissioning template and an assessment report template. Annex H is a flowchart for specialist assessments.

### **Consideration of evidence**

70. The disciplinary panel members must have regard to all the evidence presented to them. They must decide, on the balance of probabilities:

- a) whether the person's behaviour has posed, or could pose, a risk to children to whom the organisation owes a duty of care; and/or
- b) whether the behaviour has compromised, or could be seen to have compromised, the ability and reputation of the organisation to safeguard children by any failure to uphold the standards expected of the employee.

71. The absence of any criminal investigation, charge or conviction is not an adequate defence for the adult who is the subject of a disciplinary hearing. There may be evidence contained within the disciplinary investigation which leads the employer to question the suitability of the person to continue to work within a position of trust within the organisation even when no criminal activity has been identified or a criminal investigation has not led to a charge or a case has been brought before the court but there has been no conviction.

72. Children should not be expected to attend a disciplinary hearing. In some cases a young person may clearly express a wish to contribute by giving evidence in person, and in such cases should be accompanied by a responsible adult whose role will be to ensure that his or her rights are observed.

73. The burden of proof in disciplinary proceedings requires that the

evidence provided demonstrates that, on the balance of probabilities<sup>17</sup>, there is a strong likelihood that the individual is unsuitable for his or her current position.

74. The panel's decision should not be influenced by concerns about whether, at a later stage, the individual may or may not be barred from working with children. Neither should concerns about any possible appeal process influence its decision.

75. The disciplinary panel members should:

- always act reasonably and in good faith in the interests of the child and the employee
- have had no prior involvement that might prejudice their ability to hear the case fairly
- adjourn for further information or advice where necessary
- reach a decision based on full consideration of all the evidence with sufficient regard having been given to any explanation offered by the employee for his/her behaviour
- understand that the organisation must have a priority to safeguard children

### **Support for child/family**

76. Children and families involved in the allegation should be made aware of services that exist locally and nationally which can offer support and guidance. They should be provided with any necessary information regarding independent and confidential support, advice or representation.

77. Parents or carers of the child should always be kept informed of the process of an investigation. The detail of the information considered by the disciplinary panel and its deliberations cannot, however, normally be disclosed.

78. Parents or carers, and the child where appropriate, should be told the outcome as soon as possible after the decision of the panel has been reached.<sup>18</sup>

### **Support for the Individual**

79. Employers have a duty of care<sup>19</sup> to their workers and should act to manage and minimise the stress inherent in the allegations and disciplinary

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<sup>17</sup> "Balance of probabilities" means that it is more likely to be the case than not based on the evidence available. This is a lower threshold than 'beyond reasonable doubt' which is used in a Court of Law.

<sup>18</sup> *Working Together* Appendix 5 paragraph 3

<sup>19</sup> Health & Safety at Work Act 1974

process. Support to the individual is key to fulfilling this duty.

80. 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 social care or police.

81. They should be advised to contact their trade union representative, if they have one, and given access to welfare counselling or medical advice where this is provided by the employer.

82. 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 discouraged except where it is likely to be prejudicial to the gathering and presentation of evidence.

83. Throughout the process the individual should be aware of the concerns and why his or her suitability to work with children is being questioned and given the opportunity to state his or her case.

84. When an employee returns to work following a suspension, or on the conclusion of a case, arrangements should be made to facilitate his or her reintegration. This may involve informal counselling, guidance, support, re-assurance and help to rebuild confidence in working with children and young people.

#### **What to record**

Records should be kept of the investigation, including all discussions, meetings, panel hearings and decisions relating to the case. A record should also be made of any disciplinary sanction which has been imposed. This will be crucial information for any subsequent referral.

These records should be kept for the time stated in *Working Together*, which is at least until the person reaches normal retirement age, or for 10 years if that is longer.

#### **Support and Aftercare**

It is important for employers to take into account the emotional effects that allegation investigations can sometimes bring to a workplace (regardless of the outcome or whether staff are involved or not) and for those organisations that do not have good HR/aftercare to consider that staff may have unresolved feelings and will need support.

## Section Five: Referral to the Independent Safeguarding Authority

### The duty to refer

85. Where relevant employers have ceased to use a person’s services for reasons of misconduct where there has been harm or risk of harm to a child or because of a medical condition that raises a possibility of risk to the safety or welfare of children they are **required** to supply information to the Independent Safeguarding Authority.

86. The organisation is similarly required to supply information about the disciplinary process if the person resigns (or withdraws their voluntary services) before the process has been completed. It will therefore be necessary, in those cases, for the disciplinary investigation to continue. If a case for a disciplinary hearing is established, a disciplinary panel should convene and reach a decision about what disciplinary sanction would have been imposed had the person not ceased to provide their services or whether, in the case of a volunteer, the organisation would have discontinued to use their services.

### List 99 and PoCA

87. There are currently two children’s barring lists: List 99 and the Protection of Children Act (PoCA) list.

88. List 99 contains the names and personal details of education staff and others who are barred or restricted from providing education or carrying out work, including voluntary work, that involves regular contact with children under the age of 18 in or for a school, a local authority or a further education institution.

Education Staff	}	List 99
School Transport roles (taxis, bus driver)		
Private Tutors		
Governors		
Volunteers		
Agency Staff/Supply teachers		

89. The Protection of Children Act (PoCA) list covers all regulated child care organisations (including children’s homes, foster carers, and child-care settings). The PoCA legislation also permits - but does not require - other organisations, such as voluntary organisations, sports clubs and scout associations to refer names for possible inclusion in the PoCA list. The Act sets out the circumstances where a child care organisation must, and other organisations may, refer names to the Secretary of State for consideration of inclusion in the PoCA List. These are:

- (a) that the organisation has dismissed the individual on the grounds of misconduct (whether or not in the



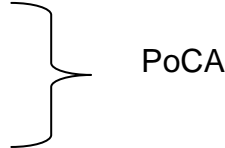
course of his employment) which harmed a child or placed a child at risk of harm, or

(b) that the individual has resigned or retired in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired, or

(c) that the organisation has, on such grounds, transferred the individual to a position within the organisation which is not a child care position, or

(d) that the organisation has, on such grounds, suspended the individual or provisionally transferred him (to a position) as in (c) above, but has not yet decided whether to dismiss him or to confirm the transfer (e.g. the organisation may have suspended or transferred on a neutral basis whilst an investigation is undertaken).

Foster Care  
Registered Child Minding  
Voluntary Work with Children  
Sports Coaching  
Scouts and similar



PoCA

90. From 12 October 2009, the barring provisions under the Safeguarding Vulnerable Groups Act 2006 will come into force, significantly extending the range of activities and workplaces from which individuals may be barred to include all regulated activities, as defined by the Act. In particular, a wider range of posts and workplaces which provide for vulnerable adults will be covered by the barring arrangements. The ISA will make independent barring decisions on cases referred to it, and bars will apply to paid employment and voluntary work in regulated activities. From this date, those barred under current arrangements who have been transferred to the new barred lists by the ISA will also be barred from the wider scope of regulated activities. It will be an offence for any barred person to work in regulated activities, and for any employer to employ someone he knows to be barred, in either a paid or voluntary capacity. Requirements will also come into force for employers to refer relevant cases to the ISA in instances of harm to the vulnerable groups.

### Decision to make a referral

91. If after investigation, the employer has ceased to use a person's services for reasons of misconduct or because they consider that person to be unsuitable to work with children, there is a **statutory duty** on the employer to make a referral. This is regardless of whether the evidence is such that the employer or LADO feel that the case is likely or unlikely to result in the individual being barred from working with children.

### **Who should make the referral?**

92. **Employers in local authority children's services** have a statutory duty to make a report to the Department if they cease to use a person's services, in other words dismiss them from work as a teacher or in a role involving regular contact with children, on grounds that the person has committed misconduct which harmed a child or placed at risk of harm a child, on grounds relating to their misconduct (for example if they falsely claim qualifications they do not possess), or on grounds relating to the person's health, where this raises an issue relating to the safety and welfare of children.

93. **All registered childcare organisations** have a statutory duty to refer the names of those individuals who occupied a child care position that they consider to be guilty of misconduct which harmed or placed at risk of harm a child.

94. **Any other organisation *may*** refer names for possible inclusion on the PoCA list.

### **How to make a referral**

95. It is important that full information about the behaviour of the person and how the judgement of the panel was informed is given to the Department. The referral form contained on the ISA website ([www.isa.gov.org.uk](http://www.isa.gov.org.uk)), together with attached notes of meetings and details gained from the disciplinary investigation, should be completed and sent to the ISA. Reports should be made promptly, preferably within a month of the person's dismissal or resignation.

96. **When there is no employer**, a decision should have been taken at the beginning of the process as to who would carry out the employers' functions (see paragraph 53). This person would be responsible for making any referral.

## Section Six: Role for LSCBs

### Challenging Practice

97. The LSCB role is to establish effective policies and procedures, based on national guidance, for checking the suitability of people applying for work with children and ensuring that the children's workforce is properly supervised, with any concerns acted on appropriately.<sup>20</sup> The LSCB will also establish policies and procedures to ensure that allegations are dealt with properly and quickly.<sup>21</sup>

98. It is possible that concerns or disagreements may arise over professional decisions, actions or lack of action in relation to the management of allegations against staff. In such cases the Senior Manager within the organisation should seek advice from his or her Named Senior Officer who has responsibility for resolving any inter-agency issues and for liaising with the LSCB.

### Monitoring and Reporting

99. The LSCB monitors and evaluates the effectiveness of the work of the local authority and Board partners to safeguard and promote the welfare of children. The LADO should regularly provide data about the management of allegations to the Board in order that monitoring and evaluation can be undertaken and any need for improvement identified and action taken. At a minimum, this data should include the number of allegations received during the monitoring period, the organisation from which the allegation arose and the nature of the allegation. The data should also record the time taken for the process and details of the conclusion.

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<sup>20</sup> *Working Together* Chapter 3.25 Page 79

<sup>21</sup> *Working Together* Chapter 3.26

## Section 7: Further Information

*Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children* (2001)

[www.homeoffice.gov.uk/documents/achieving-best-evidence/](http://www.homeoffice.gov.uk/documents/achieving-best-evidence/)

*Working Together to Safeguard Children* (2006)

[www.everychildmatters.gov.uk/socialcare/safeguarding/workingtogether/](http://www.everychildmatters.gov.uk/socialcare/safeguarding/workingtogether/)

*Safeguarding Children and Safer Recruitment in Education* (2006)

<http://www.everychildmatters.gov.uk/search/IG00175/>

Children Act 1989. London: HMSO

[http://www.opsi.gov.uk/acts/acts1989/Ukpga\\_19890041\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm)

Children Act 2004. London: HMSO

[http://www.opsi.gov.uk/acts/acts2004/ukpga\\_20040031\\_en\\_1](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_1)

Data Protection Act 1998. London:HMSO.

Website: [www.opsi.gov.uk/ACTS/acts1998/19980029.htm](http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm)

HM Government (2006c). *Information Sharing: Practitioners' guide*. London: Department for Education and Skills.

Website: [www.everychildmatters.gov.uk/information\\_sharing](http://www.everychildmatters.gov.uk/information_sharing)

Independent Safeguarding Authority

Website: [www.isa.gov.org.uk](http://www.isa.gov.org.uk)

## **Definitions**

### **Allegation**

Information which comes to light which suggests an employee, volunteer or contractor may have hurt or harmed a child, committed a criminal offence against a child or has behaved in such a way towards a child or young person that they may be considered as unsuitable to continue in their current employment or in any capacity which involves working with children.

### **Concern**

Behaviour which is of concern to a manager or employer, identified through the normal employer/employee relationship.

### **Children and Young People**

Throughout this document references are made to "children and young people". These terms are interchangeable and refer to children who have not yet reached their 18<sup>th</sup> birthday.

### **Adults**

References to 'adults' or 'volunteers' refer to any adult who is employed, commissioned or contracted to work with or on behalf of, children and young people, in either a paid or unpaid capacity.

### **Manager**

The term 'manager' refers to those adults who have responsibility for managing services including the supervision of employees and/or volunteers at any level.

### **Employer**

The term 'employer' refers to the organisation which employs, or contracts to use the services of individuals in pursuit of the goals of that organisation. In the context of this document, the term 'employer' is also taken to include 'employing' the unpaid services of volunteers.

### **Safeguarding**

Process of protecting children from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully<sup>22</sup>.

### **Duty of Care**

The duty which rests upon an individual or organisation to ensure that all reasonable steps are taken to ensure the safety of a child or young person involved in any activity or interaction for which that individual or organisation is responsible. Any person in charge of, or working with children and young

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<sup>22</sup> *Working Together* (2006)

people in any capacity is considered, both legally and morally, to owe them a duty of care.

### **Unsubstantiated**

An unsubstantiated allegation means that there is insufficient identifiable evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

### **Unfounded**

The term 'unfounded' means that there is no evidence or proper basis which supports the allegation being made, or there is evidence to prove that the allegation is untrue. There is the possibility that the allegation may be malicious (see below), but it might also indicate that the person making the allegation had misinterpreted the incident or was mistaken about what he/she saw, or was not aware of all the circumstances.

### **Malicious**

The term 'malicious' implies that an allegation, either wholly or in part, has been made with a deliberate intent to deceive or cause harm to the person subject to the allegation. For an allegation to be classified as malicious, it will be necessary to have evidence to prove the intention to cause harm. Care should be taken in dealing with such allegations as some facts may not be wholly untrue. Some parts of an allegation may have been fabricated or exaggerated but elements may be based on truth.

Great care should be taken in dealing with allegations that might appear to be unfounded or malicious. For example, with allegations considered unfounded:

- a child or young person may make an allegation in an attempt to draw attention to abuse emanating from another source within his/her family or community.
- a parent may make an allegation against a nursery worker in an attempt to evade responsibility for an injury to his/her child.
- a pupil may make an allegation against a teacher in order to deflect attention away from an incident of behaviour management.
- a parent, in dispute with a school, may make an allegation against a member of staff in order to strengthen their case.

Malicious allegation:

- A colleague may make a malicious allegation in an attempt to discredit a member of staff.

Complaints and allegations against members of staff should always be viewed objectively. The circumstances leading up to the complaint can often be complicated and the outcome far from certain. Completely vexatious allegations are rare, but such descriptions, along with terms such as

unfounded, unsubstantiated and malicious are often used in the same context. The meanings, however, are very different and it is important for staff to understand the distinction between them and avoid using generalisations that might be incorrect or misleading.

## **Roles and Responsibilities**

### **Named Senior Officer**

All LSCB member organisations should have a named senior officer with *overall* responsibility for:

- ensuring that their organisation operates procedures for dealing with allegations in accordance with the guidance in Appendix 5 of *Working Together*,
- resolving any inter-agency issues and
- liaising with the LSCB on the subject.

Responsibilities include:

- Ensuring that their organisation complies with the standards identified and agreed by the LSCB for managing allegations as outlined within *Working Together*.
- Ensuring that LSCB procedures for managing allegations are reflected and implemented within their own agency procedures.
- Ensuring that the workforce is aware of and implements the procedures in relation to all allegations against adults who work with or on behalf of children.
- Ensuring that the organisation has systems in place to review cases and identify and implement any changes therefore improving procedures and practice.
- Resolving any inter-agency issues which impede the implementation of LSCB procedures.
- Ensuring that the key roles of 'Named Senior Officer', 'Local Authority Designated Officer' and 'Senior Manager' (employer) are reflected in their agency policy and procedures.
- Ensuring that effective reporting and recording arrangements within their agencies are in place and that contact details for the LADO and the organisation's Senior Manager are available.

Meeting these responsibilities will require:

- A strategic lead
- Access to up to date and relevant information regarding the management of allegations.



## Local Authority Designated Officer

This role relates to:

- the management and oversight of individual cases,
- providing advice and guidance to employers and voluntary organisations,
- liaising with the police and social care,
- monitoring the progress of cases to ensure that they are dealt with as quickly and consistently as possible through the use of a fair and thorough process.

Responsibilities include:

- Management and oversight of individual cases from all partner agencies of the LSCB if allegation meets the thresholds set out in paragraph 1, Appendix 5 of *Working Together*.
- Providing advice, information and guidance to Senior Managers (see description of SM role below)
- Monitoring the progress of cases to ensure cases are dealt with within set timescales as specified in *Working Together*.
- Ensuring a consistent and thorough process for all adults working with children and young people against whom allegations are made.
- Maintaining information databases in relation to all allegations and producing qualitative and quantitative reports for LSCBs and the DCSF.
- Attendance at initial evaluation meetings, strategy meetings and liaising with chairs of strategy meetings (if not chairing personally).
- Contributing to LSCB training programmes and awareness-raising across the children's workforce.
- Providing assistance to agencies in the discussion regarding suspension (see 'Suspension' **Annex F**).
- Liaising with the police and the Crown Prosecution Service.
- Discussing with the SM the possibility of referral to the Protection of Children Act or to the appropriate regulatory body.
- Co-ordinating and collating reports to provide information to the LSCB and the DCSF.

Meeting these responsibilities will require:

- A working mandate from the LSCB.
- Sufficient status to liaise with the SM and NSO.
- Access to database programmes.
- Appropriate administration support.

### **Senior Manager**

The Senior Manager within the organisation has *overall* responsibility for:

- ensuring procedures are properly applied and implemented.
- providing advice, information and guidance for staff within the organisation.
- managing all allegations and concerns which relate to any employee or volunteer

Responsibilities include:

- Ensuring all staff are aware of and understand safe working practice.
- Ensuring appropriate and relevant training programmes are in place for all and accessed by all staff.
- Referring allegations in accordance with the LSCB's procedures.
- Gathering any additional information which may have a bearing on the allegation e.g. previously known concerns, care and control incidents, etc.
- Providing the subject of the allegation with information and advise them to inform their union or professional body.
- Should the allegation be unfounded, considering the need for a referral to social care for support or to the police if the allegation is deemed to be deliberately malicious or invented.
- Attending strategy meetings when required.
- Liaising with Human Resources where employer's disciplinary action is required.
- Ensuring that risk assessments are undertaken where and when required.

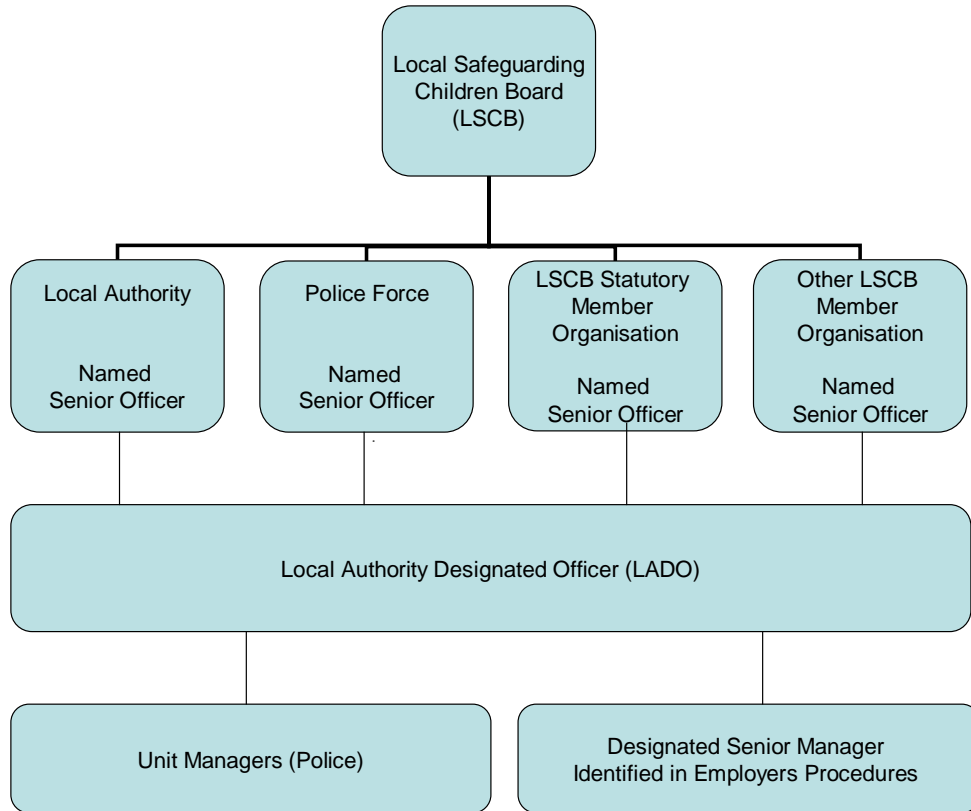
- Ensuring that effective reporting and recording systems are in place which allow for the tracking of allegations through to the final outcome.
- Undertaking appropriate checks with data that the agency may hold.
- Providing reports and information as required by NSO.
- Raising awareness of the need to empower children and young people who are in vulnerable situations by ensuring their agencies produce effective whistle-blowing and complaints procedures for all children.
- Ensuring relevant support programmes are in place for staff, parents and young people.

Meeting these responsibilities will require;

- Understanding of the LSCB procedures for managing allegations against adults who work with or on behalf of children and young people.
- Training in procedural matters.
- Access to a recording and monitoring system.
- Access to advice and guidance from 'someone independent of the organisation.' (*Working Together* Appendix 5 Paragraph 13).

**Annex C**

**Structure for supporting the management of allegations of abuse against staff and volunteers**



## Record Keeping

Record-keeping is an integral part of all safeguarding processes. Those which relate to the management of allegations need to document a complete picture of the events, decisions or actions so it is clear when something happened, how a decision was made and what chain of events led to a particular action.

Employers are required to keep all records pertaining to allegations where these involve a child or young person and, if concerns arise which relate to the welfare or safety of a child or young person, employers are under a legal obligation to disclose information held on record to police or social care agencies

The Data Protection Act 1998<sup>23</sup> lays down strict rules on how information about individuals should be managed; personal data must be kept secure and up-to-date and must not be retained for longer than the purpose for which the data was gathered.

Records of allegations, however, must be retained until the subject of the allegation reaches normal retirement age, or 10 years from the date of the allegation if that is longer.<sup>24</sup>

Records should be kept and maintained at every stage of the process thus ensuring that sound decisions are made on full, accurate and up-to-date information and the rationale for those decisions can be traced, scrutinised and justified where necessary. Records relating to allegations which have been found to be without substance must also be retained.

A chronology or log of key events, decisions and actions taken should also be maintained to provide a quick overview of progress.

Individuals are entitled to have access to their personal details held as computerised or manual records. Employers have a responsibility, however, to remove personal data about a third party before complying with an access request.<sup>25</sup>

*Working Together* states that purpose of record-keeping is to;

- enable accurate information to be given in response to any future request for a reference.
- provide clarification in cases where a future CRB Enhanced Disclosure

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<sup>23</sup> Data Protection Act 1998 Employment Records Code of Practice and Supplementary Guidance and retention of records

<sup>24</sup> *Working Together* Appendix 5 Paragraph 9

<sup>25</sup> Information Commissioners Office – [www.ico.gov.uk](http://www.ico.gov.uk)

reveals information from the police that an allegation was made but did not result in a prosecution or conviction.

- prevent unnecessary re-investigation if an allegation resurfaces after a period of time.

Accurate record keeping and retention also allows for patterns of behaviour which may pose a risk to children to be identified. Throughout the process of managing an allegation it is important that a clear chronology of all discussion and actions is maintained by both the LADO and the Senior Manager or employer.

The chronology should start when the Senior Manager contacts the LADO for an initial consultation about an adult working with children.

**Basic Minimum information to be recorded**

Senior Manager in Organisation (Employer)	Local Authority Designated Officer (LADO)
<p><b>Staff Member or Volunteer</b></p> <ul style="list-style-type: none"> <li>▪ Name</li> <li>▪ Date of Birth</li> <li>▪ Address</li> <li>▪ Title of Job</li> <li>▪ Employment Status</li> <li>▪ Any previous concerns</li> </ul> <p><b>Allegation or Concern</b></p> <ul style="list-style-type: none"> <li>▪ Nature</li> <li>▪ Date</li> <li>▪ Time</li> <li>▪ Location</li> <li>▪ Details of witnesses</li> </ul> <p><b>Child or Young Person</b></p> <ul style="list-style-type: none"> <li>▪ Name</li> <li>▪ Date of Birth</li> <li>▪ Gender</li> </ul> <p><b>Details of colleagues consulted</b></p> <ul style="list-style-type: none"> <li>▪ LADO</li> <li>▪ Human Resources</li> </ul> <p><b>Decisions and action taken/to be taken</b></p> <p><b>Information provided to adult subject of the concern</b></p>	<p><b>Staff Member of Volunteer</b></p> <ul style="list-style-type: none"> <li>▪ Initials</li> <li>▪ Date of Birth</li> <li>▪ Agency</li> <li>▪ Title of Job</li> <li>▪ Any previous concerns</li> </ul> <p><b>Allegation or Concern</b></p> <ul style="list-style-type: none"> <li>▪ Nature</li> <li>▪ Date</li> <li>▪ Time</li> <li>▪ Location</li> </ul> <p><b>Advice Given</b></p> <p><b>Action to be taken by LADO</b></p> <p><b>Action to be taken by organisation’s senior manager</b></p>

<b>Date</b>	<b>Date</b>
<b>Signature</b>	<b>Signature</b>

In those cases where the professional judgement of those involved in the initial consideration of the allegation or concern is such that further investigation is necessary or advisable, the record should be extended to contain the following information:

**Minimum information for consideration**

Senior Manager in Organisation (Employer)	Local Authority Designated Officer (LADO)
<p><b>Process</b></p> <ul style="list-style-type: none"> <li>▪ Summary of meetings</li> <li>▪ Decisions reached</li> <li>▪ Any disciplinary action taken</li> <li>▪ Outcomes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Name and date of birth of adult</li> <li>▪ Scope of adult’s contact with children</li> <li>▪ Details of relevant policies and procedures in place within the adult’s place of work</li> <li>▪ Details of training received by the adult on expected behaviour</li> </ul> <p><b>Process</b></p> <ul style="list-style-type: none"> <li>▪ Notes of meetings</li> <li>▪ Decisions reached</li> <li>▪ Outcomes</li> </ul>

If, at the end of the process, the employer is dismissed, resigns or, in the case of a volunteer or supply worker, the organisation ceases to use the adult’s services, the employer must make a referral to the ISA and enclose with the referral full details of all the records kept during the process.

See Section 5 on ‘Referral to the Independent Safeguarding Authority’.

## **Information Sharing**

### **Informing the individual**

The person who is the subject of the allegation should generally be informed of the allegation at the *earliest* opportunity. But the possible risk of harm to children posed by an accused person needs to be effectively evaluated and managed. In determining when to inform the individual, consideration should be given to any potential risks to the child involved in the allegations, or to any other children connected to the individual's home, work or community life.

Consideration should also be given to the potential for the individual to impede any investigation, remove or interfere with evidence or to intimidate or coerce potential witnesses. In some cases this will require the employer to delay informing the individual in order to agree the timing with relevant colleagues from police and social care.

### **Informing parents and children**

In some circumstances the employer may need to advise parents of an incident involving their child straight away, for example if the child has been injured and requires medical treatment. In other circumstances the parents or carers of a child or children involved should be told about the allegation as soon as possible and the employer should discuss with the LADO how and by whom they should be informed.

### **Confidentiality and information management**

Every effort should be made to maintain confidentiality and guard against unwanted publicity while an allegation is being considered or investigated. The employer's press office, where they have one, should be consulted and the organisation should take advice from police and social care to agree an information management strategy.

This should include:

- Who needs to know and, importantly, exactly what 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

Information about the child or family should not be shared with the individual against whom the allegation was made or anyone representing them.



## **Sharing information arising from an investigation**

Where the case involves police investigation, the police should obtain consent at the outset from the individuals concerned to share the statements and evidence they obtain with the employer for disciplinary purposes.

Police will then be able, at the conclusion of any formal or judicial process, to provide the employer with relevant information to assist them with their internal disciplinary investigations. Children's social care should adopt a similar procedure so that any information obtained in the course of their enquiries relevant to a disciplinary case can be passed to the employer without delay.

## **Internal disciplinary Investigations**

In all cases, the matter will at some point be referred back to the employer for internal investigation. Information gathered from discussions, evaluations, meetings etc will be shared with the employer to aid their investigations. In some cases this will be because the initial considerations have concluded that there is no criminal element to pursue. In other cases it will be because the police or Crown Prosecution Service determines that a prosecution may not be appropriate for the best interests of the child. It should be referred back if the evidence is deemed insufficient to support a conviction; or it may be re-referred at the conclusion of legal proceedings. Parents should be kept informed about the progress of the case, and they should be made aware of the outcome of any disciplinary process<sup>26</sup>.

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<sup>26</sup> Parents are not entitled to know the details of the evidence heard or the deliberations of the disciplinary panel, but they are entitled to know the outcome

## Suspension

### When should Suspension be considered?

*Working Together* states<sup>27</sup> that 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 considered grounds for dismissal. However, the guidance also goes on to say that people must not be suspended automatically or without careful thought and that employers must consider carefully whether the circumstances of a case warrant a person being suspended from contact with children until the allegation or concern is resolved.

### Alternatives to suspension

While weighing the factors as to whether suspension is necessary, alternatives to suspension should be considered if available and deemed suitable. This may be achieved by:

- the individual undertaking duties which do not involve direct contact with the child concerned or other children e.g. office work
- providing an assistant/colleague to be present when the worker has contact with children

It may be appropriate to use an alternative to suspension when an allegation is first made. This would allow time for an informed decision regarding suspension to be made and possibly reduce the initial impact of the allegation. This will however depend upon the nature of the allegation.

### An interview to consider suspension

Where suspension is being considered, an interview with the member of staff should be arranged. Where police are involved in a criminal investigation, this interview should not be conducted without prior consultation with the officer in charge of the case.

The member of staff should be advised to seek the advice and assistance of his or her trade union, or a friend if s/he is not a member, and offered the opportunity of a brief meeting with the representative or friend before the interview.

The member of staff should be given as much information, including the reasons for any proposed suspension, as is consistent with not interfering with an investigation about the allegation. If it is considered that suspension

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<sup>27</sup> *Working Together* Appendix 5, Paragraph 20

is necessary, the individual should be advised that he or she is suspended from duty. Written confirmation should be dispatched within one working day, giving the reasons for the suspension.

### **Support**

Any member of staff subject to an allegation, regardless of any decision to suspend or otherwise, should be supported throughout the process via occupational health or employee welfare arrangements where these are available. S/he should also be encouraged to seek advice and support at the earliest opportunity from their professional association or trade union if s/he is a member.

If suspended, the member of staff, or his/her representative, should be given the name of a contact person who should then keep him/her up to date regarding the progress of the case. The need for help and support is equally applicable when considering a suspended person's return to work.

### **Supply workers and volunteers**

With regard to supply workers, it is good practice for the Senior Manager of the organisation to apply the principles of suspension and associated support, wherever possible. Any decision to stop using the services of a supply worker should not be influenced by his/her potential loss of pay.

When the services of agency staff are suspended, that agency should be involved with, and contribute to, the risk assessment of the worker continuing to work with children in another position.

The principles of suspension and support also apply to volunteers.

The employer should maintain a record of the decisions reached regarding suspension, who was involved in making those decisions, the rationale behind them, and details of any action taken.

## Annex G

### **Undertaking a Specialist Assessment - Guidance Notes, Commissioning Template and Assessment Report Template**

A specialist assessment is the means by which information relating to the circumstances, nature and detail of an individual's behaviour is assessed by a suitably qualified person.

Specialist assessments should be commissioned when the context and complexity of an allegation is such that the potential risks of an adult's continued employment must be assessed in order to inform the employer's decision making within the disciplinary process.

Where there is no employer and concerns about an adult have been raised and discussed within a multi-agency initial evaluation or strategy meeting, a conclusion may be reached that a specialist assessment should be commissioned by the LADO on behalf of the LSCB.

Before a specialist assessment is commissioned, the LADO, and where appropriate the investigating officer, should ensure;

- That the reasons for the specialist assessment are clearly recorded
  - a disciplinary investigation undertaken by an employer requires more professional opinion on the behaviour of the adult or;
  - a disciplinary panel requires more information about the behaviour of the adult before reaching an employment decision or;
  - there is no employer, but the reported behaviour of an adult within the local community raises the need for a specialist opinion
- That all relevant information will be made available to the person undertaking the assessment
- That the requirements of the assessment are clearly communicated to the assessor

A specialist assessment should be undertaken by a suitably qualified person and should include:

- a review and analysis of all written records pertaining to the allegation
- information about the adult's response to the allegation

- recommendations which are relevant, explicit and applicable to the specific circumstances relating the allegation

Any request for or commission of a specialist assessment should follow the format outlined below in order to ensure the requirements of the assessment are met.

### Commissioning Form for use by Employer or LADO

<p><b>1. Terms of Reference</b></p> <ul style="list-style-type: none"> <li>• <b>The reason for the assessment</b></li> <li>• <b>The parameters of the assessment in seeking to ascertain a professional opinion about:</b> <ul style="list-style-type: none"> <li>○ <b>Potential risk to children</b></li> <li>○ <b>Potential risk to organisation’s ability to safeguard children</b></li> </ul> </li> <li>• <b>What further information is needed</b></li> <li>• <b>The means by which it will be obtained</b></li> <li>• <b>Timescales</b></li> </ul>	<p>Agree ToR with assessor</p>
<p><b>2. Information provided to Specialist Assessor by the LADO and/or Investigating Officer</b></p> <ul style="list-style-type: none"> <li>• <b>Details of allegation</b></li> <li>• <b>The employer’s concerns or those of the multi-agency strategy meeting</b></li> <li>• <b>The behaviour that individual acknowledges has occurred</b></li> <li>• <b>The aspects of the allegation that are disputed or denied by the adult</b></li> <li>• <b>The expected standards of behaviour for the adult’s profession</b></li> <li>• <b>Confirmation of the agency’s/organisations standards or codes of conduct</b></li> </ul>	<p>Attach all records</p>
<p><b>3. Has the individual agreed to contribute to this assessment?</b></p>	<p>Attach confirmation of agreement</p>

## Report Format for Independent Specialist Assessment

**CONFIDENTIAL**

Independent Assessment Report  
into the circumstances surrounding the allegation or concern about  
(Initials)

Commissioned by (name and role of individual, name of organisation)

Commissioned from (name of person, professional status and organisation)

Date commission agreed

Date report delivered

<p><b>1. Reason Specialist assessment was commissioned</b></p> <ul style="list-style-type: none"><li>• Give a brief outline of circumstances leading to either disciplinary investigation being undertaken or decision by multi-agency strategy meeting to commission report</li></ul>
<p><b>2. Statement of Professional Integrity</b></p> <ul style="list-style-type: none"><li>• Give a brief outline of relevant skills, experience and competence to undertake this assessment</li></ul>
<p><b>3. Terms of Reference</b></p> <ul style="list-style-type: none"><li>• State the agreement reached between the commissioner and the assessor about the scope of the assessment</li></ul>

#### **4. Sources of Information**

- Give details of all records used, for example
  - HR files
  - Social Care Child Protection enquiries
  - Police Records
- Give details of all face-to-face interviews undertaken



## **5. Professional and Organisational Standards**

- Confirm and evidence
  - The organisation's regulations, professional codes of conduct or expected standards of behaviour and accepted good practice
  - Whether the individual saw, signed and acknowledged any written guidance
  - Whether the individual received any induction and on-going training in relation to expected behaviour

**6. Case Summary**

- Outline and contextualise the concern
- Outline professional actions taken to date

## **7. Background information about the Individual**

- **Include**

- Previous alleged behaviour that is disputed
- Previous behaviour that has contravened the organisation's code of conduct
- Previous managerial action

### **8. Analysis of findings**

- Summarise significant points from the report and consider alongside significant aspects of the individual's behaviour
  - Consider what behaviour, if any, the individual agrees has taken place
  - Do these behaviours contravene the code of conduct expected of the individual?
  - Consider individual views and attitudes about the behaviour

- Consider what behaviour has been alleged, what is denied and what the circumstances of the disputed behaviour were
- Consider patterns of agreed and disputed behaviour within the context of relevant research

NB – it is not for the assessor to determine whether or not a disputed allegation is founded.

**9. Identification potential risks**

- **Based on the analysis of findings above state what risk the individual could pose to the organisation should employment**

**continue**

**Closing Sheet**

**Signed:**

**Dated:**

**Contact:**

**Specialist Assessment Flowchart**

