BDMAT
Birmingham Diocesan Academies Trust

Managing allegations against staff, directors, governors or volunteers procedure

Issued: November 2018
Next review due: Autumn 2020

All allegations of abuse of children by those who work with children (whether in a paid or unpaid capacity) must be taken seriously. The procedure below is adopted from the procedure of Birmingham Children's Safeguarding Trust and has been amended only to make it clear to Birmingham Diocesan Academies Trust of their responsibilities. The procedures set out below include procedures that will be followed by other agencies.

1.0 Thresholds for implementation of this procedure

1.1 These procedures should be applied when there is an allegation or concern that any person who works with children has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates they may pose a risk of harm to children.

1.2 These behaviours should be considered within the context of the definitions of abuse and neglect and should include concerns relating to inappropriate relationships between members of staff and children or young people, for example:

- having a sexual relationship with a child under 18 if in a position of trust in respect of that child, even if consensual;
- 'Grooming', i.e. meeting a child under 16 with intent to commit a relevant offence;
- other 'grooming' behaviour giving rise to concerns of a broader child protection nature (for example, inappropriate text/e-mail messages or images, gifts, socialising etc); and
- possession of indecent photographs/pseudo-photographs of children.

1.3 All references in this document to 'members of staff' should be interpreted as meaning all paid or unpaid staff and volunteers, including foster carers and approved adopters. This chapter also applies to any person who manages, or facilitates access to, an establishment where children are present.

2.0 Roles and responsibilities

2.1 Schools/Central Office should ensure there is a member of staff appointed:

- a designated senior manager to whom allegations or concerns should be reported; and
- a deputy to whom reports should be made in the absence of the designated senior manager or where that person is the subject of the allegation or concern.

2.2 If staff members have concerns about another staff member, this should be referred to the head teacher (for staff employed in schools) and to the CEO (for concerns regarding centrally employed staff). Where there are concerns about the head teacher, this should be referred to the CEO. Concerns regarding the CEO should be referred to the Chair of the Birmingham Diocesan Academies Trust.

2.3 Staff may consider discussing any concerns with the school's designated safeguarding lead and make any referral via them.

2.4 Detailed guidance on managing allegations about school staff can be found in the latest version of *Keeping children safe in education: Statutory guidance for schools and colleges*.

3.0 Underlying principles

3.1 When dealing with allegations against staff, directors, governors or volunteers the following principles should be applied:

4.0 Confidentiality

4.1 Every effort should be made to maintain confidentiality and guard against publicity while an allegation is being investigated. Apart from keeping the child, parents and accused person (where this would not place the child at further risk) up to date with the progress of the case, information should be restricted to those who have a need to know in order to protect children, facilitate enquiries, and manage related disciplinary processes.

4.2 The police should not provide identifying information to the press or media, unless and until a person is charged, except in exceptional circumstances (for example, an appeal to trace a suspect). Any exceptional circumstances should be documented, and partner agencies consulted beforehand.

5.0 Specific requirements in relation to teachers

5.1 Section 13 of the Education Act 2011 places restrictions on the publication of any information that would identify a teacher who is the subject of an allegation of misconduct that would constitute a criminal offence where the alleged victim of the offence is a registered pupil at the school.

5.2 Such restrictions remain in place unless or until the teacher is charged with a criminal offence, though the Magistrates' Court may dispense with these restrictions if it is satisfied that it is in the interests of justice to do so, having regard to the welfare of:

a. The person who is the subject of the allegation; and
b. The victim of the offence to which the allegation relates.

5.3 There is a right of appeal to the Crown Court.

5.4 This restriction will apply to allegations made against any teacher who works at a school, including supply and peripatetic teachers. 'School' includes academies, Free Schools, independent schools and all types of maintained schools.

5.5 There is an offence of publishing any information in breach of these restrictions. Publication includes any communication, in whatever form, which is addressed to the public at large or any section of the public.

6.0 Support

6.1 The employer, together with local authority children's social care and/or police (where they are involved), should consider the impact on the child concerned and provide support as appropriate. Liaison between the agencies should take place in order to ensure that the child's needs are addressed.

6.2 As soon as possible after an allegation has been received, the accused member of staff should be advised to contact their union or professional association. Human Resources should be consulted at the earliest opportunity in order that appropriate support can be provided via the organisation's occupational health or employee welfare arrangements.

6.3 Suspension

6.4 Suspension should not be automatic. It should, however, be considered in any case where:

- there is cause to suspect a child has suffered, or is likely to suffer significant harm;
- the allegation warrants investigation by the police; or
- the allegation is so serious that it might be grounds for dismissal;
- there is a need to protect the integrity of any evidence or continuing investigation.

6.5 The possible risk of harm to children should be evaluated and managed in respect of the child involved and any other children in the accused member of staff's home, work or community life.

6.6 If a strategy meeting/discussion is to be held, or if local authority children's social care or the police are to make enquiries, the Designated Officer (LADO) should canvass their views on suspension and inform the employer. Only the employer, however, has the power to suspend an accused employee and they cannot be required to do so by a local authority or police. Suspension of a member of staff must be discussed first with the CEO.

6.7 If a suspended person is to return to work, the employer should consider what help and support might be appropriate (for example, a phased return to work and/or provision of a mentor), and also how best to manage the member of staff's contact with the child concerned, if still in the workplace.

7.0 Resignations and 'compromise agreements'

7.1 Every effort should be made to reach a conclusion in all cases even if:

- the individual refuses to co-operate, having been given a full opportunity to answer the allegation and make representations; or
- it is not possible to apply disciplinary sanctions (for example, if a person's period of notice expires before the process is complete).

7.2 'Compromise agreements' must not be used (i.e. where a member of staff agrees to resign provided that disciplinary action is not taken and that a future reference is agreed). A settlement/compromise agreement which prevents the employer from making a DBS referral when the criteria are met is likely to be considered a criminal offence (for failure to comply with the duty to refer).

8.0 Organised and historical abuse

8.1 Investigators should be alert to signs of organised or widespread abuse and/or the involvement of other perpetrators or institutions. They should consider whether the matter should be dealt with in accordance with complex abuse procedures which, if applicable, will take priority. See Organised and Complex Abuse.

8.2 Non-current allegations should be dealt with in the same way as contemporary concerns. It will be important to ascertain if the accused is currently working with children and to consider whether their current employer should be informed.

9.0 Whistle-blowing

9.1 All staff should feel confident to voice concerns about the attitude or actions of colleagues. It is the responsibility of each agency to advise their staff to access its internal whistle blowing policy. This should form part of staff members' induction process.

9.2 If a member of staff believes that a reported allegation or concern is not being dealt with appropriately by their organisation, they should report the matter to the Designated Officer (LADO) for their area.

10.0 Timescales

10.1 Cases should be dealt with fairly and thoroughly but also as quickly as is practical, avoiding all unnecessary delays.

11.0 Responding to an allegation or concern

11.1 An allegation against a member of staff may arise from a number of sources (for example, a report from a child, a concern raised by another adult in the organisation, or a complaint by a parent). It may also arise in the context of the member of staff and their life outside work.

12.0 Initial action by the person receiving or identifying an allegation or concern

12.1 The person to whom an allegation or concern is first reported should treat the matter seriously and keep an open mind. They should:

- make a written record of the information (where possible in the child/adult's own words), including the time, date and place of incident/s, persons present and what was said;
- sign and date the written record; and
- immediately discuss the issue with the designated senior manager in their organisation. Where the designated senior manager is absent, or is the subject of the allegation, they should approach the deputy or other appropriate senior manager.

12.2 It is essential that this person to whom an allegation or concern is first reported does **NOT** investigate or ask leading questions, make assumptions or offer alternative explanations, or promise confidentiality (although it is acceptable to provide assurance that the information will only be shared on a 'need to know' basis).

13.0 Initial action by the designated senior manager

13.1 When informed of a concern or allegation that appears to meet the thresholds outlined in this procedure (see above), the designated senior manager should:

- obtain written details of the concern/allegation, signed and dated by the person receiving the allegation (not the child/adult making the allegation);
- approve and date the written details
- record any information about times, dates and location of incident/s and names of any potential witnesses; and
- record discussions about the child and/or member of staff, any decisions made, and the reasons for those decisions.

13.2 They should **NOT** investigate the matter or interview the member of staff, child concerned or potential witnesses. Instead, they must inform the relevant Designated Officer (LADO) for their area **within one working day.** Referrals should not be delayed in order to gather information and a failure to report an allegation or concern in accordance with procedures is a potential disciplinary matter.

13.3 If an allegation requires immediate attention, but is received outside normal office hours, the designated senior manager should consult the local authority children's social care emergency duty team or local police and inform the Designated Officer (LADO) as soon as possible.

14.0 Initial consideration by the designated senior manager and the Designated Officer (LADO)

14.1 There are up to three strands in the consideration of an allegation:

- A police investigation of a possible criminal offence;
- Social care enquiries and/or assessment about whether a child is in need of protection or services; and
- Consideration by an employer of disciplinary action.

14.2 The Designated Officer (LADO) and the designated senior manager should consider what action should be taken.

14.3 If there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, the Designated Officer (LADO) and the designated senior manager should consider immediate safeguarding action and should make a referral to local authority children's social care so that they can initiate a section 47 enquiry and convene a strategy meeting/discussion (the Designated Officer (LADO) is likely to be involved in the section 47 enquiry. If this is not the case, the progress and outcome of any section 47 enquiry should be communicated to the Designated Officer (LADO) whilst there is an on-going allegations process)

14.4 The Designated Officer (LADO) and the designated senior manager should then consider whether further details are needed in order to establish whether the allegation is false or unfounded. Care should be taken to ensure that the child is not confused as to dates, times, locations or identity of the member of staff.

14.5 Where required, the Designated Officer (LADO) will convene a multi-agency **evaluation meeting/discussion** to consider, oversee and review any investigatory processes in relation to allegations (in some parts of the wider West Midlands these evaluation meetings/discussions are simply referred to as strategy meetings/discussions). The Designated Officer (LADO) will usually chair these meetings.

14.6 The evaluation meeting/discussion may, where appropriate, be linked to a section 47 strategy meeting/discussion. In these cases, a manager from local authority children's social care will usually chair the meeting.

15.0 Contacting the police

15.1 The police must be consulted about any case in which a criminal offence may have been committed. If the threshold for significant harm is not reached, but a police investigation might be needed, the Designated Officer (LADO) should immediately inform the police and convene an evaluation meeting/discussion, to include the police, employer and other agencies involved with the child.

16.0 Informing the parent(s) and child

16.1 The Designated Officer (LADO) will advise the Trust whether or not informing the parents of the child involved will impede the disciplinary or investigative processes. If it is agreed that the information can be fully or partially shared, the employer will inform the parent(s). In some circumstances, however, the parent(s) may need to be told straight away (for example, if a child is injured and requires medical treatment).

16.2 The processes involved should be explained to the parent(s), and the child if sufficiently mature, and they should be kept informed about the progress of the case and of the outcome where there is no criminal prosecution. This will include the outcome of any disciplinary process, but not the deliberations of, or the information used in, a hearing.

17.0 Informing the accused person

17.1 The senior manager should seek advice from the Designated Officer (LADO), the police and/or local authority children's social care about how much information should be disclosed to the accused person.

17.2 Subject to restrictions on the information that can be shared, the senior manager should, as soon as possible, inform the accused person about the nature of the allegation, how enquiries will be conducted and the possible outcome (for example, disciplinary action, dismissal or referral to the DBS or regulatory body).

17.3 The accused member of staff should:

- be treated fairly and honestly and helped to understand the concerns expressed and processes involved
- be kept informed of the progress and outcome of any investigation and the implications for any disciplinary or related process
- if suspended, be kept up to date about events in the workplace.

18.0 Informing Ofsted

18.1 Ofsted should be informed of any allegation or concern made against a member of staff in any day care establishment for children under 8 or against a registered child minder. They should also be invited to take part in any evaluation meeting/discussion.

18.2 Ofsted should also be informed of all allegations made against a foster carer, prospective adopter, or member of staff in a residential child care facility.

19.0 Position of Trust or Evaluation meeting/discussion

19.1 A Position of Trust (PoT) or evaluation meeting/discussion should take place **within one working day** of the Trust becoming aware of the allegation.

20.0 Professional representation

20.1 The PoT or evaluation meeting/discussion should involve all individuals who hold information relevant to the investigation of the allegation. This may include:

- The relevant Designated Officer (LADO);
- Social care manager (to chair if linked with a section 47 strategy meeting);
- Relevant social worker and their manager;
- Detective sergeant;
- The Designated Health Professional from the relevant CCG (this is essential if an allegation concerns a health agency worker/professional);
- Designated senior manager for the employer concerned;
- Human resources representative;
- Legal adviser where appropriate;
- Senior representative of the Birmingham Diocesan Academies Trust;
- Manager from the fostering service provider when an allegation is made against a foster carer;
- Supervising social worker when an allegation is made against a foster carer;
- Those responsible for regulation and inspection where applicable (for example, CQC, GMC or Ofsted);
- Where a child is placed or resident in the area of another authority, representative(s) of relevant agencies in that area; and
- Complaints officer if the concern has arisen from a complaint.

21.0 Purpose of the PoT or evaluation meeting/ discussion

21.1 The PoT or evaluation or strategy meeting/discussion should be used to:

- Share all relevant information about the person who is the subject of the allegation and about the alleged child victim (including any previous allegations or concerns);
- Plan the investigation/enquiries and set timescales for tasks to be undertaken;
- Agree how progress will be monitored by the Designated Officer (LADO);
- Consider whether any other children are affected by the allegations (for example, any children of the accused, or other children in the organisational setting);
- Consider the support needs of any children affected and any action that needs to be taken to provide immediate protection or safeguard any children during the investigation;
- Determine any action that needs to be taken in respect of any other children identified including the need for a section 47 enquiry;
- Decide how regular information and support will be provided to the child and family and by whom;
- Ensure that the person who is the subject of the allegation is kept informed and supported;
- Plan all interviews and agree who should undertake them so that there is no confusion between a criminal investigation, section 47 enquiries and disciplinary processes;
- Consider whether circumstances require the accused to be suspended from contact with children in order to inform the employer's decision about this issue (including whether a foster carer's approval should be suspended and the implications for other children in the placement). This may change as the investigation progresses and should be reviewed regularly; and
- Address any issues that are likely to arise (for example, media interest, resource implications).

21.2 A follow up meeting/discussion should be held to ensure that all tasks have been completed, including any referrals to the DBS if required. Where appropriate this follow up meeting will agree an action plan for future practice based on lessons learnt.

22.0 Allegations against staff in their personal lives

22.1 If an allegation or concern arises about the behaviour of a member of staff outside of their work, and this may present a risk of harm to children for whom the member of staff is responsible, the general principles outlined in these procedures will still apply.

22.2 The evaluation or strategy meeting/discussion should decide whether the concern justifies:

- approaching the Birmingham Diocesan Multi-Academy Trust for further information, in order to assess the level of risk of harm; and/or
- inviting the Birmingham Diocesan Academies Trust to a further evaluation or strategy meeting/discussion about dealing with the possible risk of harm.

22.3 If the member of staff lives in a different authority area to that which covers their workplace, the LADO should liaise between the relevant agencies in both areas and a joint evaluation or strategy meeting/discussion convened.

22.4 In some cases, an allegation of abuse against someone closely associated with a member of staff (for example, partner, member of the family or other household member) may present a risk of harm to children for whom the member of staff is responsible. In these circumstances, an evaluation or strategy meeting/discussion should be convened to consider:

- the ability and/or willingness of the member of staff to adequately protect any children;
- whether measures need to be put in place to ensure their protection; and
- whether the role of the member of staff is compromised.

23.0 Record keeping

23.1 Senior managers in the Birmingham Diocesan Academies Trust should keep a clear and comprehensive summary of the case record on a person's confidential personnel file and give a copy to the individual. The record should include details of how the allegation was followed up and resolved, the decisions reached, and the action taken. It should be kept at least until the person reaches normal retirement age or for ten years if longer.

23.2 The purpose of the record is to enable accurate information to be given in response to any future request for a reference if the person has moved on. It will provide clarification where a future DBS request reveals non convicted information and will help to prevent unnecessary reinvestigation if an allegation re-surfaces after a period of time. In this sense it may serve as a protector to the individual themselves, as well as in cases where substantiated allegations need to be known in order to safeguard future children.

23.3 Details of allegations that are found to be malicious should be removed from personnel records.

23.4 For more information on the procedures for staff in schools and educational establishments, see *Keeping children safe in education*.

24.0 Monitoring progress

24.1 The Designated Officer (LADO) should monitor and record the progress of each case, either fortnightly or monthly depending on its complexity. This could be through additional evaluation or strategy meetings/discussions or direct liaison with the police, local authority children's social care, or the Birmingham Diocesan Academies Trust, as appropriate. Where the target timescales cannot be met, the Designated Officer (LADO) should record the reasons.

24.2 The Designated Officer (LADO) should keep comprehensive records in order to ensure that each case is being dealt with efficiently and that there are no undue delays. The records will also assist the LSCBs to monitor and evaluate the effectiveness of the procedures for managing allegations and provide statistical information to central government as required.

24.3 If a police investigation is to be conducted, the police should set a date for reviewing its progress and consulting the Crown Prosecution Service about continuing or closing the investigation or charging the individual. Wherever possible, this should be no later than four weeks after the evaluation or strategy meetings/discussions. Dates for further reviews should also be agreed, either fortnightly or monthly depending on the complexity of the investigation.

25.0 Outcome of allegation investigations

25.1 The evaluation or strategy meeting/discussion should take in to account the following definitions when determining the outcome of allegation investigations:

Substantiated: there is sufficient identifiable evidence to prove the allegation.
False: there is sufficient evidence to disprove the allegation.
Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive.

Unsubstantiated: this is not the same as a false allegation. It means that there is insufficient evidence to either prove or disprove the allegation: the term therefore does not imply guilt or innocence.

25.2 Unsubstantiated, false or malicious allegations

i. Where it is concluded that there is insufficient evidence to substantiate an allegation, the chair of the evaluation or strategy meeting/discussion should prepare a separate report of the enquiry and forward this to the designated senior manager of the employer to enable them to consider what further action, if any, should be taken.

ii. False allegations are rare and may be a strong indicator of abuse elsewhere which requires further exploration. If an allegation is demonstrably false, the Birmingham Diocesan Academies Trust, in consultation with the Designated Officer (LADO), should refer the matter to local authority children's social care to determine whether the child is in need of services, or might have been abused by someone else.

iii. If it is established that an allegation has been deliberately invented, the police should be asked to consider what action may be appropriate.

25.3 Substantiated allegations and referral to the DBS

i. If an allegation is substantiated the Designated Officer (LADO) should discuss with the Birmingham Diocesan Academies Trust whether a referral should be made to the Disclosure and Barring Service (DBS). The Birmingham Diocesan Academies Trust should make this referral but the Designated Officer (LADO) has overall responsibility to ensure the referral is made in a timely manner.

ii. The Disclosure and Barring Service (DBS) was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

iii. The following groups have a **legal duty to refer** information to the DBS:

- Regulated activity suppliers (employers and volunteer managers);
- Personnel suppliers; and
- Groups with a 'power to refer'. This includes:
  - Local authorities (safeguarding role);
  - Health and Social Care trusts;
  - Education and Library Boards;
  - Keepers of registers (for example, General Medical Council, Nursing and Midwifery Council); and
  - Supervisory authorities (for example, Care Quality Commission, Ofsted).

iv. If the person being referred to the DBS is a teacher in England they should also be referred to the Teaching Regulation Agency which is part of the Department for Education.

26.0 Disciplinary process

26.1 The Designated Officer (LADO) and the designated senior manager should discuss whether disciplinary action is appropriate in all cases where:

- It is clear at the outset, or decided by an evaluation or strategy meeting/discussion, that a police investigation or section 47 enquiry is not necessary; or

- The Birmingham Diocesan Academies Trust or Designated Officer (LADO) is informed by the police or the Crown Prosecution Service that a criminal investigation and any subsequent trial is complete, or that an investigation is to be closed without charge, or a prosecution discontinued.

26.2 The discussion should consider any potential misconduct or gross misconduct on the part of the member of staff, and take into account:

- information provided by the police and/or local authority children's social care;
- the result of any investigation or trial; and
- the different standard of proof in disciplinary and criminal proceedings.

26.3 If disciplinary action is taken it should follow the disciplinary procedure of the Birmingham Diocesan Academies Trust

27.0 Sharing information for disciplinary purposes

27.1 Wherever possible, police and children's social care should, during the course of their investigations and enquiries, obtain the consent of the person who is the subject of the investigation to provide the Birmingham Diocesan Academies Trust and/or regulatory body with statements and evidence for disciplinary purposes. The Birmingham Diocesan Academies Trust should be notified if consent is not given so they can prepare to obtain this information at the end of the criminal process.

27.2 If the police or Crown Prosecution Service decide not to charge, or decide to administer a caution, or the person is acquitted, the police should pass all relevant information to the Birmingham Diocesan Academies Trust without delay.

27.3 If the person is convicted, the police should inform the employer and the LADO straight away so that appropriate action can be taken.

28.0 Learning lessons

28.1 At the conclusion of the process, the Birmingham Diocesan Academies Trust and the Designated Officer (LADO) should review the circumstances of the case to determine whether there are any improvements to be made to the organisation's procedures or practices.