

NORTH EAST LINCOLNSHIRE SAFEGUARDING CHILDREN PARTNERSHIP
ALLEGATIONS AGAINST STAFF OR VOLUNTEERS

CONTENTS

1. Introduction
2. Allegations dealt with by these procedures
3. Roles and Responsibilities
4. Responding to an allegation or concern – the role of the employer
5. The role of the LADO
6. Notifying Ofsted
7. Guidance on allegations against Foster Carers
8. Outcomes following an investigation
9. Substantiated allegations
10. Disciplinary or suitability process and investigation
11. General responsibilities when investigating an allegation

1. INTRODUCTION

Despite all efforts to recruit safely there will be occasions when allegations are made of abuse by staff or volunteers against children. All organisations which have employees or volunteers working with children should therefore have clear and accessible policies and procedures, consistent with these procedures, which explain what should happen when allegations about the behaviour of a member of staff or volunteer are raised. This should include the requirement to appoint a Designated Safeguarding Lead (DSL) to whom these allegations are reported. It is the responsibility of this DSL to report allegations to, and otherwise liaise with, the Local Authority Designated Officer (LADO) who has the responsibility to manage and have oversight of allegations against people who work with children (Working Together 2018).

Local Safeguarding Children Partnerships should have arrangements in place for monitoring and evaluating the effectiveness of the arrangements to manage allegations. In North East Lincolnshire the Safeguarding Children Partnership arrangements are in place

All references in this document to ‘members of staff’ and ‘employment’ should be interpreted as meaning all paid or unpaid staff and volunteers, including foster carers and prospective adopters. All references to employers should be taken to include any agency or organisation with responsibility for paid or unpaid staff and volunteers, including foster carers and prospective adopters.

2. ALLEGATIONS DEALT WITH BY THESE PROCEDURES

These procedures should be applied when there is an allegation that any person who works with children, in connection with their employment or voluntary activity, 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;
- behaved towards a child or children in a way that indicates they may pose a risk of harm to children.

Allegations can be made in relation to physical handling and restraint but can also relate to inappropriate relationships between members of staff and children and 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 (see Section 16 – 19 Sexual Offences Act 2003);
- grooming, i.e. meeting a child under 16 with intent to commit a relevant offence (see Section 15 Sexual Offences Act 2003);

- other grooming behaviour giving rise to concerns a broader child protection nature e.g. inappropriate text/email messages or images, gifts, socialising etc;
- possession of indecent photographs/pseudo-photographs of children.

In addition, these procedures should be applied to cases where:

- a person who is or has been working with children is known to have previously been involved in child abuse;
- behaviour towards his or her own children or family members raises concerns;
- involvement with potentially criminal or illegal activity staff implications for children is identified;
- an allegation of abuse is made against a partner, family member/household, which gives rise to concerns about the safety of children with whom a person has contact in connection with his/her work a voluntary activity;
- conduct within or outside the workplace that gives rise to concerns about safeguarding children.

The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may well even not meet the criteria set out above, or may do so without warranting consideration of either a police investigation or enquiries by Local Authority Children's Social Care Services. In these cases, employers should follow their safeguarding and other relevant procedures to resolve cases without delay.

The difference between an allegation and a concern

It might not be clear whether an incident constitutes an allegation. It is important to remember that in order to be an allegation the alleged incident has to be sufficiently serious as to suggest that harm has or may have been caused to a child/children or that the alleged behaviour indicates the person may pose a risk of harm to children (or otherwise meet the criteria above). Issues that do not meet this threshold may constitute conduct and disciplinary issues that should be addressed by the employers using appropriate organisational procedures.

If it is difficult to determine the level of risk associated with an incident the following should be considered:

- Was the incident a disproportionate or inappropriate response in the context of a challenging situation?
- Where the incident involved an inappropriate response to challenging behaviour, had the member of staff had training in managing this?
- Does the member of staff understand that their behaviour was inappropriate and expressed wish to behave differently in the future? For example, are they willing to undergo training?
- Does a child or family want to report the incident to the police or would they prefer the matter to be dealt with by the employer?
- Have similar allegations being made against the employee – is there a pattern developing?

Incidents which fall short of the threshold could include an accusation that is made second or third hand and the facts are not clear, or the member of staff alleged to have done this was not there at the time, or there is confusion about the account

Whether an incident constitutes an allegation and hence needs to be dealt with through these procedures, there may need to be a discussion by the LADO and the employees safeguarding lead. If it falls short of this threshold there may still be a role for the LADO to provide advice and support to the employer. Where the matter constitutes a conduct or performance issue, the employer should follow the appropriate disciplinary procedures and let LADO know of the outcome.

Organised abuse

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

Non-recent abuse

Allegations of non-recent abuse should be responded to and reported in same way as contemporary allegations. In case of non-recent abuse, the person against whom the allegations are made may still be working with children, it will be important to investigate whether this is the case.

3. ROLES & RESPONSIBILITIES

Roles and responsibilities for all organisations

Each organisation providing a service to children and families must have a policy on how it manages child safeguarding concerns so that staff, children and families know how to identify and report abuse and neglect. The policy should be consistent with and refer to these NEL SCP procedures. Safeguarding training for staff should be provided and refreshed regularly and children and family should be regularly reminded of how they can report concerns.

Where services for children families are being commissioned, commissioners should ensure that contracts include these requirements.

Each organisation should identify named senior manager with overall responsibility for:

- ensuring that the organisation deals with allegations in accordance with these procedures;
- resolving any into agency issues;
- making statutory notifications to professional bodies and the disclosure and barring service (DBS);
- liaising with the NEL SCP on the subject.

Organisations should also appoint:

- A designated safeguarding lead to whom allegations or concern should be reported. This person should be a senior manager. They should:
 - Seek advice from the LADO regarding incidents where it is unclear whether it is an allegation or concern;
 - report all allegations of harm to the LADO;
- A deputy to whom reports should be made in the absence of the designated safeguarding lead or where that person is a subject of the allegation or concern.

In practice the named Senior Manager and the designated safeguarding lead may be the same person.

Whistleblowing

All staff should be made aware of the organisations whistleblowing policy and feel confident to voice their concerns about the attitude and actions of colleagues. If a member of staff believes the reported allegation concern is not being dealt with appropriately by the organisation they should report the matter to the LADO.

Roles and responsibilities for local authorities – in addition to their role as an employer

Local Authorities should assign a LADO to:

- receive reports about allegations and to be involved in the management and oversight of individual cases;
- provide advice and guidance to employers and voluntary organisations;
- liaise with police and other agencies;
- monitor the progress of cases to ensure they dealt with as quickly as possible, consistent with the thoroughfare process;
- provide advice and guidance to employers in relation to making referrals to the Disclosure and Barring Service (DBS) and regulatory bodies such as Ofsted and the Teaching Regulation Agency etc.

It is important that those giving advice have expertise in this area, as any errors in the advice could have serious ramifications, both for those individuals who have had allegations made against them and for those making the allegation

It is important to be aware that LADOs do not carry out investigations into allegations – responsibility for the investigation remains with the employer (or whoever is commissioned by the employer to investigate the process) and/or the police. The LADO can provide advice and, where necessary, coordinate the process. The LADO is responsible for ensuring an appropriate outcome is reached. Where it is not straightforward to establish which organisation should lead an investigation, for example, where responsibility may be shared between the employment agency and the organisation where the person was working, the LADO will also provide advice regarding which organisation is best placed to lead the investigation.

Cases which cross Authority boundaries

Cases will often be relevant to more than one authority. For example, an allegation could be made against an agency worker who works across multiple authorities and his agencies based in another authority. Decisions about which latter should take the lead are complex and should consider the following:

- which agency holds the greatest risk? For example, if an agency worker has only worked one day in school where the allegation is taken place and won't be returning, it might be that the employment agency holds the most risk;
- where is organisational learning required? For example, an agency worker may have only worked in a school for a day, but if the school did not follow good practice guidance with the worker and this contributed to the incident, the greatest learning might be with the school.

Roles and responsibilities for the police

A Police Detective Inspector will:

- have strategic oversight of the local police arrangements for managing allegations against staff and volunteers;
- liaise with the NEL SCP on the issue;
- ensure compliance with these procedures.

The police should designate a detective sergeant/s to:

- liaise with the LADO;
- take part in strategy meeting/discussion;
- review the progress of case in which there is police investigation;
- share information as appropriate, or completion of the investigation or related prosecution.

4. RESPONDING TO AN ALLEGATION OR CONCERN – THE ROLE OF THE EMPLOYER

An allegation or concern raised about a member staff may arise from a number of sources, for example, a report from the 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 a life outside work or at home.

Initial action by person receiving or identifying an allegation or concern

The person to whom an allegation or concern is first reported should treat the matter seriously and keep an open mind. They should not:

- investigate or ask leading questions;
- make assumptions or offer alternative explanations;
- promise confidentiality.

This should follow their organisation's procedures, which should include the following:

- making a written record of the information (where possible in the child/adult's own words), including the time, date and place of incident, persons present and what was said;
- signing and dating the written record;
- immediately reporting the matter to designated safeguarding lead or the deputy in their absence or where the designated safeguarding lead is a subject of the allegation report to the deputy or other appropriate senior manager.

Some, very serious allegations, should be immediately reported to the police – this will also enable prompt action to be taken to gather evidence from mobile phones etc.

Initial action by the Designated Safeguarding Lead (if different)

When informed of a concern or allegation, the designated safeguarding lead should not investigate the matter but they should continue to gather factual information in regards to the incident and ensure any evidence is preserved. This fact-finding should be neutral process and should not amount an investigation of the incident.

They should:

- obtain written details of the constant/allegation, signed and dated by the person receiving it (not the child/adult making the allegation);
- a proven date the written details;
- record any information about times, dates and location of incidents names of any potential witnesses;
- record discussions about the child and all member of staff, any decisions made, and the reasons for those decisions.

Deciding if it's an allegation of harm or concern

The Designated Safeguarding Lead should review the information available and consideration should be given as to whether the case meets the threshold of harm/risk of harm:

- if it is decided it meets the threshold of harm/risk of harm and therefore is an allegation they should follow the procedures below and notify the LADO within one working day. If appropriate, the police should also be notified within one working day – or immediately if necessary;
- if it is decided the incident does not meet threshold of harm/risk of harm and is a concern only, then this should take steps ensure any conduct or behaviour issues are addressed with the member of staff through normal employment practices;
- if the designated safeguarding lead is unclear whether the incident meets the threshold of harm/risk of harm they may wish to seek advice from the LADO.

Notifying the LADO within one working day of an allegation

The designated safeguarding lead must inform their LADO within one working day when an allegation is made prior to any further investigation taking place. A failure to report an allegation according with procedures is a potential disciplinary matter. If it is outside of normal working hours and there is an immediate risk to a child the Local Authority Emergency Duty Team for children's social care should be informed.

Suspension – When it should be considered

Suspension should be considered only in cases where there is a cause to suspect a child or other children at the place of employment is/are at risk of harm or the case is so serious that it might be grounds for dismissal. The case manager must consider carefully whether the circumstances warrant suspension from contact with children until the allegation is resolved, and may wish to seek advice from their human resources adviser and L ADO. The case manager should also consider whether the results that will be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can resolved quickly and without the need for suspension. If the LADO, police and children social care have no objections to the member staff

continuing to work during the investigation, the case manager should be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternative should be considered by the case manager before suspending a member of staff:

- redeployment so the individual does not have direct contact with the child or children concerned;
- providing an assistant to be present when the individual has contact with children;
- redeploying to alternative work so the individual does not have unsupervised access to children;
- temporarily redeploying the member staff to another role in a different location.

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

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

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

Children's Social Care or the police cannot require the case manager to suspend a member of staff or volunteer, although the employer should give appropriate weight to their advice. The power to suspend is vested in the employer. However where a discussion concludes that there should be enquiries by children social care and/or investigation by the police the LADO should canvas police and children social care for their views about whether the accused member of staff need to be suspended from contact with children in order to inform consideration of suspension. Police involvement does not make it mandatory to suspend a member staff this decision should be taken on a case-by-case basis having undertaken a risk assessment.

If a suspended person is to return to work the employee should consider what help and support might be appropriate e.g. a phased return to work and/or provision of a mentor, and also how best to manage the member of staff contact with the child concerned, if still in the workplace.

5. THE ROLE OF THE LADO

Initial consideration of an allegation by the DSL and the LADO deciding if it is an allegation of harm or a concern:

- all concerns reported to the LADO should be assessed to decide if the threshold for an allegation has been met. In cases where it is not clear whether the threshold has been met, it might be necessary to have a discussion to evaluate whether the threshold is met – sometimes referred to as an evaluation meeting;
- it is essential to keep the employer who raised the concern informed whilst the case has been assessed. Organisations raising concerns may want to challenge or discuss decisions made by the LADO and will need to be updated on any action taken;
- the employer and the LADO should discuss the incident and agree whether or not it meets the threshold for risk of harm. Consideration should be given to the risk or potential risk to both the child/children directly affected by the issue and any other children who may also be at risk;
- it is decided that the incident does not meet the threshold of harm/risk of harm and is a concern only, then the employee should take steps to ensure that any conduct or behaviour issues are addressed with the member staff through the normal employment practices.

Considering an allegation

There are up to 4 strands in the consideration of an allegation:

- a police investigation if possible criminal offence has been committed;
- children social care enquiries and/or assessment about whether a child is in need of protection services;
- consideration by the employer of disciplinary action in relation to possible performance/conduct issues;
- whether action regards to the person making the allegation should be considered where the allegation is no foundation and may be malicious.

The LADO and the designated safeguarding lead should consider first whether further details are needed and whether there is evidence or information that establishes that the allegation is false or unfounded.

If the allegation is not demonstrably false and there is cause to suspect that the adult poses a risk of harm the LADO should convene an allegations management meeting/discussion. This will sometimes have to take place immediately but the speed at which is convened should be commensurate to the risk.

If the allegation does not meet threshold for risk of harm but there are concerns the child has been harmed or there is no evidence of harm but there was a concern about inappropriate behaviour etc., the LADO should inform the employer of this who will then take responsibility for addressing the issue. The LADO can provide advice and support to the employer where necessary.

The police must be consulted about any case in which criminal offence may have been committed.

If the threshold for harm is not reached but a police investigation might be needed the LADO should immediately discuss the case with the police and where necessary convene a meeting to include the police employer and other agencies involved with the child.

Allegations management meeting (AMM)/discussion

An AMM will decide the strategy for managing the allegation. When necessary this will be a face-to-face meeting. Many cases can be managed through a discussion between the designated safeguarding lead the police and any other relevant agencies and the LADO. Where there is a larger number of people involved in the case the benefit of convening a face-to-face meeting is increased.

An AMM will be chaired by the LADO it will normally be attended by the police, social worker for the child (where there is one) and the employer. The employer is advised to bring a human resources adviser. In situations where the allegations against a health professional the designated or named nurse for safeguarding should be invited.

The meeting should:

- clearly outline what is being investigated and why;
- ensure that all present share information and understand the full circumstances of the case (including whether the child/young person needs a remedy to the case);
- decide whether there should be a Section 47 enquiry and / or police investigation;
- consider whether any parallel disciplinary process can take place and agree protocols for sharing information;
- consider the current allegation in the context of any previous allegations or concerns;
- where appropriate, take account of any entitlement by staff to use reasonable force to control or restrain children;
- consider whether a complex abuse investigation is applicable;
- plan enquiries if needed, allocate tasks and set timescales including asking for evidence at the earliest possible stage and identifying evidence needed from third parties;
- decide what information can be shared with whom and when.

The meeting should also:

- ensure that arrangements are made to protect the child or children involved and any other child/children affected including taking emergency action where needed;
- consider what support should be provided to all children who may be affected;
- consider what support should be provided to the member staff, and others who may be affected, and how they will be kept up-to-date with the progress of the investigation;
- ensure that investigations are sufficiently independent;
- make recommendations where appropriate regarding suspension or alternatives to suspension;
- identify lead contact manager within each agency;
- agree protocols for reviewing investigations and monitoring progress by the LADO having regard to the target timescales;
- consider issues for the attention of senior management e.g. media interest, resource implications;
- consider notifying relevant professional bodies, disclosure and barring and Ofsted
- agree dates for future meetings

A final meeting or discussion should be held to ensure that all tasks have been completed including referrals to the DBS if appropriate and where appropriate agree an action plan for future practice based on lessons learnt. The conclusion should analyse any organisational learning as well as any individual learning.

Meeting/discussions in relation to allegations against staff in the personal lives

If an allegation arises about a member staff in their personal lives and this may present a risk of harm/risk of harm to children for whom the staff member is responsible for through their employment/volunteering a meeting or discussion should be convened to decide whether the allegations concerned justifies:

- approaching the member of staffs employer for further information in order to assess the level of risk of harm; and/or
- inviting the employer to a further meeting/discussion about dealing with the possible risk of harm.

If the member of staff lives in a different authority area to that which covers their workplace liaison should take place between the relevant agencies in both areas and a joint meeting/discussion convened.

In some cases an allegation of abuse against someone closely associated with a member of staff e.g. partner, member of the family or a household member may present risk of harm to children for whom the member of staff is responsible through their employment/volunteering. In these circumstances a meeting /discussion should be convened to consider:

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

6. NOTIFYING OFSTED

Childminders and Day Care

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

Foster Carers, Prospective Adopters and Residential Care

A Senior Manager of the employer or fostering agency should inform Ofsted of all allegations made against a foster carer, prospective adopter or member staff in a residential childcare facility. There are established notification processes in place

7. GUIDANCE ON ALLEGATIONS AGAINST FOSTER CARERS

Foster carers and their families are subject to investigation on the same basis as anyone else if it is alleged that they may have abused children or young people. Yet, in other respects, they are in a unique position. The regulatory framework requires the careful scrutiny of foster carers from application through to arrangements for reviewing and terminating their approval to foster. As a result, much of their family life is lived in the public arena, open to social workers from Children's Social Care and the fostering service provider, as well as the families of looked after children and other members of the community.

They provide care for Looked After Children 24 hours a day, seven days a week in their own homes, but the vast majority of carers do not have an employment relationship with their fostering service provider. Although children and young people may be abused in foster families, most allegations have little or no foundation when they are closely investigated. Well established placements may be disrupted with serious consequences for the children and young people concerned. Foster carers and their families are subject to enormous stress during enquiries into an allegation, and are often isolated. Family relationships and almost every other aspect of life are severely affected.

There may be up to 3 strands in the consideration of an allegation against a foster carer. Depending on the circumstances, it may be necessary for these strands to operate in parallel. For example a fostering service may decide to suspend a foster carer from receiving further placements while a police investigation and/or enquiry by children's services is taking place and pending a review of the foster carers' approval. Where there is an allegation the fostering services procedure must be operated concerning a review of a foster carers suitability to foster and the decision making processes of the fostering services panel and decision maker according to the fostering regulations 2011.

Should there be concerns about fostered children and young people, an immediate discussion between the LADO and the manager of the fostering service will enable them to exchange information about the nature of the concerns; how and why they have arisen; information about the foster placement and what immediate actions need to be taken.

Following consultation with the police and Children's Services, the LADO may notify the fostering service manager that the allegation is a matter to be determined by the fostering service provider's procedures.

The LADO, in liaison with the police, Children's Social Care and the fostering service, should decide together when foster carers should be told about the allegation, if they are not otherwise aware of it, bearing in mind that foster carers should normally be told about the allegation at the earliest opportunity.

Depending on the nature of the allegation, Children's Social Care may initiate strategy discussions along with the police to determine whether a section 47 or concurrent police investigation is necessary. In addition to the manager of the fostering service (or someone they delegate), the following should also be invited to the strategy discussion:

- Ofsted;
- The employer's HR representative should be invited if the foster carer is an employee of the fostering service provider;
- Any independent agency commissioned to undertake the investigation.

The discussion will need to consider the following issues:

- Significant information about the child or young person concerned, including previous placements, and information about any previous allegations or complaints made by the child or young person;
- Significant information about the foster carers, including the terms of their approval their record as carers and any past allegations/serious concerns relating to them or members of their families;
- Whether anything needs to be done immediately to safeguard the welfare of any other children and young people in the foster carer's household;
- Whether anything needs to be done to safeguard the welfare of other children and young people that the foster carer or relevant member of their family has contact with e.g. as child minders, youth workers etc.
- What action, if any, needs to take place in relation to other children previously placed in the foster home;
- Decisions about information to be given to key people e.g. foster carers, adult members of the foster family, parents/people with parental responsibility, other local authorities who have children in placement/may have had children in placement, out-of-hours services;
- What information is to be given to fostered children and by whom, what support/counselling will be provided for them, and what will be recorded;
- Decisions by the fostering service provider regarding any temporary changes concerning the foster carer's terms of approval, pending the completion of the investigation;
- Arrangements that could be made if someone were to move out of the foster home in order to safeguard a placement;
- The time-scale for interviewing key adults and children;
- Clarification of the role of the supervising worker and the fostering service's ongoing support to the foster carer and their family;
- Whether the appointment of an advocate for each child or young person in the family, including the children of foster carers is necessary or not;
- The management of any media implications.

The foster carer's supervising social worker, or the manager of the fostering service provider, should normally be responsible for communication with the foster carer/adult member of the carer's family about the decisions of the strategy discussion (unless there are restrictions imposed by the police). Whoever is delegated by the strategy discussion to communicate with the foster carer, they should ensure that foster carers:

- Are given a copy of the local authority's safeguarding children procedure;
- Have access to legal advice and representation;
- Understand the process of the enquiry and why it is taking place;
- Know when, where and by whom interviews will be conducted;
- Are assisted in communicating with the investigating agencies;
- Are informed verbally, and in writing on a regular basis of the progress of the investigation;
- Are informed of the independent support that can be provided;
- Are informed about the financial arrangements the fostering service provider will make in relation to allowances/fees if fostered children are removed or the carer is temporarily suspended from taking further placements.

They must also ensure that foster carers:

- Know the reasons for the removal of children and young people, if applicable;
- Understand the current status of their approval to foster;
- Are informed verbally, and in writing on a regular basis of the progress of the investigation.

Foster carers must have access to immediate information and advice from an independent source if there is an allegation against them, or the fostering service has informed them that they have a serious concern about their practice or standards of care.

Timescale for completing investigations of allegations

It is in everyone's interest to resolve cases quickly as possible consistent with a fair and thorough investigation. All allegation should be investigated a priority to avoid any delay. The time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but the timescales below should be retrieved in all but truly exceptional cases. It is expected that:

- 80% of cases should be resolved within one month;
- 90% of should be resolved within three months;
- all but the most exceptional cases should be completed within 12 months

Monitoring Progress

The LADO should monitor and record the progress of each case, either fortnightly or monthly depending on its complexity. This could be by way of review meetings/discussions or direct liaison with involved parties as appropriate. Where the target timescales cannot be met the LADO should record the reasons.

The LADO should keep comprehensive records in order to ensure that each cases been dealt with expeditiously and that there are no undue delays. The records will also assist the NEL SCP to monitor and evaluate the effectiveness of the procedures for managing allegations and provide statistical information as required.

If a police investigation is to be conducted the police should set a date for reviewing its progress and consulting with the Crown Prosecution Service about continuing or closing the investigation or charging the individual. Dates of further reviews should also be agreed either fortnightly or monthly depending on the complexity of the investigation. If due to the complexity of the case the period between discussions need to be longer the reason for this should be recorded.

8. OUTCOMES FOLLOWING AN INVESTIGATION

The following definition should be used in determining the outcome of an allegation investigations:

- **substantiated:** there is sufficient evidence to prove the allegation;
- **malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **false:** there is sufficient evidence to disprove the allegation;
- **unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence;
- **unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made

False allegations may be an indicator of abuse elsewhere which requires further exploration. If an allegation is demonstrably false the employer in consultation with the LADO should refer the matter to children social care to determine whether the child is in need of services or might have been abused by someone else.

The rationale behind the outcome agreed should be recorded by the LADO.

References in cases where the allegation is false, unsubstantiated or malicious

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

Record-keeping in relation to the outcome of an investigation

Details of allegations that are found to have been malicious should be removed from personnel records. However, for all of the allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved and a note of any action taken and decisions reached is kept on the confidential personnel file of the accused and a copy provided to the person concerned. The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help prevent unnecessary reinvestigation if, as sometimes happens, an allegation resurfaces after a period of time. The record should be retained at least until person has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer. The information Commissioner has published guidance on employment records in its employment practices codes and supplementary guidance which provide some practical advice on record retention. Records which contain information about allegations of sexual abuse should be preserved for the duration of the independent enquiry into child sexual abuse (IICSA).

9. SUBSTANTIATED ALLEGATIONS

Referral to Disclosure and Barring Service (DBS)

If an allegation is substantiated and the person is dismissed or the employee ceased to use the person's service or the person resigns or otherwise ceases to provide his/her services, the LADO should discuss with the employer whether referral should be made to the Disclosure and Barring Service.

If a referral is to be made it should be submitted within one month of the allegation being substantiated

Bodies with a legal duty to refer

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

- Regulated Activity suppliers (employers and volunteer managers);
- Personnel suppliers;
- Groups with a power to refer.

Bodies with the power to refer

The following groups have a power to refer information to the DBS:

- Local authorities (safeguarding role);
- Health and Social care (HSC) trusts (NI);
- Education and Library Boards;
- Keepers of registers e.g. General Medical Council, Nursing and Midwifery Council;
- Supervisory authorities e.g. Care Quality Commission, Ofsted.

If the person being referred to the DBS is a teacher in England they should also be referred to the Teaching Regulation Agency.

Whenever a local authority refers person to the DBS they must consider with their doing so under the duty to refer or their power to refer.

10. DISCIPLINARY OR SUITABILITY PROCESS AND INVESTIGATION

The designated senior manager should discuss whether disciplinary action is appropriate in all cases where:

- It is clear at the outset or decided by a strategy meeting / discussion that a police investigation or children's social care enquiry is not necessary; or
- The employer or 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.

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 Children's social care;
- The result of any investigation or trial;
- The different standard of proof in disciplinary and criminal proceedings.

In the case of supply, contract and volunteer workers, normal disciplinary procedures may not apply. In these circumstances, the LADO and employer should act jointly with the providing agency, if any, in deciding whether to continue to use the person's services, or provide future work with children, and if not, whether to make a report for consideration of barring or other action.

If formal disciplinary action is not required, the employer should institute appropriate action within three working days. If a disciplinary hearing is required, and further investigation is not required, it should be held within the timeframe laid out in the employer's procedures

If further investigation is needed to decide upon disciplinary action, the employer and the LADO should discuss whether the employer has appropriate resources or whether the employer should commission an independent investigation because of the nature and/or complexity of the case and in order to ensure objectivity. The investigation should not be conducted by a relative or friend of the member of staff.

The aim of an investigation is to obtain, as far as possible, a fair, balanced and accurate record in order to consider the appropriateness of disciplinary action and / or the individual's suitability to work with children. Its purpose is not to prove or disprove the allegation.

If, at any stage, new information emerges that requires a child protection referral, the investigation should be held in abeyance and only resumed if agreed with LA children's social care and the police. Consideration should again be given as to whether suspension is appropriate in light of the new information.

The investigating officer should aim to provide a report within ten working days.

On receipt of the report the employer should decide, within two working days, whether a disciplinary hearing is needed. If a hearing is required, it should be held within the timeframe laid out in the employers procedures.

Sharing information for disciplinary purposes

Wherever possible, police and Children's social care should, during the course of their investigations and enquiries, obtain consent to provide the employer and/or regulatory body with statements and evidence for disciplinary purposes.

If the police or CPS decide not to charge, or decide to administer a caution, or the person is acquitted, the police should pass all relevant information to the employer without delay.

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

Resignations and compromise agreements

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

- the individual refuses to cooperate having been given a full opportunity to answer the allegation and make representation;
- it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete.

Settlement agreements, sometimes referred to as compromise agreements, by which a person agrees to resign if the employer agrees not to pursue disciplinary action and both parties agree a form of words to be used in future reference should not be used in case of refusal to cooperate or resignation before the persons notice period expires. Nor should they be used as a way of concluding a disciplinary investigation where there is a substantiated outcome. Such an agreement will not prevent a thorough police investigation where that is appropriate

Learning lessons

The employer and the LADO should review the circumstances of the case to determine whether any improvements were made to the organisation's procedures or practice.

11. GENERAL RESPONSIBILITIES WHEN INVESTIGATING AN ALLEGATION

Support to the child and family involved

The organisation, together with children social care and/or police whether involved should consider the impact on the child concerned and provide support as appropriate. Liaison between agencies should take place to ensure that the child's needs are addressed.

Keeping parents/carers and children informed

The employer must inform the parents of the child / children involved of the allegation and the process that is being followed unless this will impede disciplinary or investigative processes. The LADO can advise the employer whether or not the parent should be informed. However, in some circumstances parents may need to be told straightaway. The parents and child if sufficiently mature should be helped to understand the processes involved 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, or all the information used in a hearing.

Responsibilities to employees/volunteers alleged to have caused harm

Support the accused member of staff

As soon as possible after investigations 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 by the organisation's occupational health or employee welfare arrangements

Keeping the accused member staff informed

Subject to restrictions on the information that can be shared the employer 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, referral to regulatory body etc.

The accused member of staff should:

- be treated fairly and honestly and help to understand the concerns expressed in the 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

The person concerned should be provided with sufficient information to enable them to understand what it is that they are alleged to have done or threatened to do that is wrong and allow their view to be heard and considered. This also needs to be seen in the wider context of prevention, for example, information can be used to support people to change or modify their behaviour.

Consideration should be given to withhold information in the following circumstances:

- whether it is safe to disclose – this applies to both any child / children and any witnesses particularly where there is domestic abuse
- if the matter is subject police involvement the police should always be consulted so criminal investigations are not compromised

Confidentiality

Every effort should be made to maintain confidentiality and guard against publicity while an allegation is being investigated or considered. Apart from keeping the child parents and accused person (where this would not place a 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 the child, facilitate enquiries and manage related disciplinary suitability processes.

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

Parents and carers should be made aware of the requirement to maintain confidentiality about any allegations made against teachers when investigations are ongoing as set out in section 13 of the education act 2011. If parents or carers wish to apply to the court have reporting restrictions removed they should be advised to seek legal advice.

The restrictions remain in place unless or until the teacher is charged with a criminal offence, though they may be dispensed with on the application to the magistrates court by any person if the court is satisfied that it is in the interests of justice to do so having regard to the welfare of:

- the person who is a subject of the allegation, and
- the victim of the offence to which the allegation relates.

There is a right of appeal to the Crown Court.

The restriction will apply to allegations made against any teacher who works at a school, including supply and peripatetic teachers. School includes Academy's, Frees Schools, independent schools and all types of maintained schools.

The reporting restrictions also cease to apply if the individual to whom the restrictions apply effectively waive their right to anonymity by going public themselves or by giving their written consent for another to do so or if a judge lifts restrictions in response to a request to do so.

The Legislation imposing restrictions makes clear that the publication of material that may lead to the identification of the teacher who is subject to the allegation is prohibited. Publication includes any speechwriting relevant programme or other communication in whatever form, which is addressed the public at large or any section of the public. This means a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public).