



Allegations against staff, volunteers or agency staff

Concerns may come from a parent, child, colleague or member of the public. Allegations or concerns must be referred to the designated safeguarding lead (Sandra Burgess) without delay - even if the person making the allegation later withdraws it.

Identifying

An allegation against a member of staff, volunteer or agency staff constitutes serious harm or abuse if they:

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

Staff also need to be aware that if their own child/children come to the attention of the statutory agencies for child protection, then issues of transference of risk will need to be considered by the employer.

Informing

- All staff report allegations to the designated safeguarding lead (Sandra Burgess).
- A child who reports that he/she may have been abused by an employee of the pre-school, must be carefully listened to in all circumstances so that their voice is clearly recorded. Staff should only use open questions in seeking clarity and write down the child's words, explanations and questions raised accurately. Staff should not interpret what the child is saying as this could compromise any investigation. Also staff cannot promise confidentiality to pupils who disclose allegations. Staff should make this clear to children who approach them, whilst also offering reassurance that they have a right to be heard and that their allegation will be taken seriously.
- The designated safeguarding lead together with the Owner should form a view about what immediate actions are taken to ensure the safety of the children and staff in the setting, and what is acceptable in terms of fact-finding.
- It is essential that no investigation occurs until and unless the LADO has expressly given consent for this to occur, however, the person responding to the allegation does need to have an understanding of what explicitly is being alleged.
- The designated safeguarding lead must take steps to ensure the immediate safety of children, parents, and staff on that day within the setting.
- The Local Authority Designated Officer (LADO) is contacted as soon as possible and within 24 hours. **This referral and or contact with the LADO service must take place prior to any form of investigation being undertaken by the pre-school and before the member of staff is made aware of the allegation.**

Contact details for LADO

Telephone: **03000 41 11 11**

Email: **kentchildrenslado@kent.gov.uk**

If a call is urgent i.e a child is in immediate danger and requires safeguarding, call **03000 41 11 11**.

If a call is urgent and outside of office hours call **03000 41 91 91**.

Referral forms (for professionals and parent/carers) are available on Kent Safeguarding Children Multi-agency Partnership (KSCMP) website. www.kscmp.org.uk

- A child protection referral is made by the designated person if required. The LADO, line managers and local safeguarding children's services can advise on whether a child protection referral is required.
- The designated safeguarding lead asks for clarification from the LADO on the following areas:
 - what actions the designated safeguarding lead must take next and when and how the parents of the child are informed of the allegation
 - whether or not the LADO thinks a criminal offence may have occurred and whether the police should be informed and if so who will inform them

- whether the LADO is happy for the setting to pursue an internal investigation without input from the LADO, or how the LADO wants to proceed
- whether the LADO thinks the person concerned should be suspended, and whether they have any other suggestions about the actions the designated safeguarding lead has taken to ensure the safety of the children and staff attending the setting
- The designated person records details of discussions and liaison with the LADO including dates, type of contact, advice given, actions agreed and updates on the child's case file.
- Parents are not normally informed until discussion with the LADO has taken place, however in some circumstances the designated safeguarding lead 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.
- Staff do not investigate the matter unless the LADO has specifically advised them to investigate internally. Guidance should also be sought from the LADO regarding whether or not suspension should be considered. The person dealing with the allegation must take steps to ensure that the immediate safety of children, parents and staff is assured. It may be that in the short-term measures other than suspension, such as requiring a staff member to be office based for a day, or ensuring they do not work unsupervised, can be employed until contact is made with the LADO and advice given. (See Appendix 1 'Considering Whether Suspension is Appropriate')
- The designated safeguarding lead ensures staff fill in a welfare/incident reporting form (printed on blue paper).
- If after discussion with the designated safeguarding lead, the LADO decides that the allegation is not obviously false, and there is cause to suspect that the child/ren is suffering or likely to suffer significant harm, then the LADO will normally refer the allegation to children's social care.
- If notification to Ofsted is required the designated safeguarding lead will inform Ofsted as soon as possible, but no later than 14 days after the event has occurred. The designated safeguarding lead will liaise with the Owner about notifying Ofsted.
- If LADO advised that an internal investigation should be carried out, then our disciplinary procedure will be followed (See also appendix 2 Disciplinary Investigation)
- The designated safeguarding lead person ensures that a record is kept of the allegation made, how it was followed up and resolved as well as a note of the actions taken and decision reached see 'Allegation Made Against Staff Member' form. This is kept on the employee's confidential personnel file.
- Avenues such as performance management or coaching and supervision of staff will also be used instead of disciplinary procedures where these are appropriate and proportionate. If an allegation is ultimately upheld the LADO may also offer a view about what would be a proportionate response in relation to the accused person.
- The designated safeguarding lead must consider revising or writing a new risk assessment where appropriate, for example if the incident related to an instance where a member of staff has physically intervened to ensure a child's safety, or if an incident relates to a difficulty with the environment such as where parents and staff are coming and going and doors are left open.
- All allegations are investigated even if the person involved resigns or ceases to be a volunteer.

Allegations against agency staff

Any allegations against agency staff must be responded to as detailed in this procedure. In addition, the designated safeguarding lead must contact the agency following advice from the LADO

Allegations against the designated person

- If a member of staff has concerns that the designated safeguarding lead has behaved in a way that indicates they are not suitable to work with children as listed above, this is reported to the Owner who will investigate further.
- During the investigation, the Owner will identify another suitably experienced person to take on the role of designated safeguarding lead.

Recording

- A record is made of an allegation/concern, along with supporting information, using the Welfare/incident reporting form (printed on blue paper); normally by the practitioner who has observed the incident. This is then entered on the file of the child, and the safeguarding summary is completed and placed in the front of the child's file.
- If the allegation refers to more than one child, this is recorded in each child's file
- If relevant, a child protection referral is made, with details held on the child's file.

See also appendix 4 Retention of records

Disclosure and Barring Service

- If a member of staff is dismissed because of a proven or strong likelihood of child abuse, inappropriate behaviour towards a child, or other behaviour that may indicate they are unsuitable to work with children such as drug or alcohol abuse, or other concerns raised during supervision, when the staff suitability checks are done or a referral to the Disclosure and Barring Service is made. (See appendix 3 Referral to Disclosure and barring Service)

Escalating concerns

- If a member of staff believes at any time that children may be in danger due to the actions or otherwise of a member of staff or volunteer, they must discuss their concerns immediately with the designated safeguarding lead.
- If after discussions with the designated safeguarding lead, they still believe that appropriate action to protect children has not been taken they must speak to the Owner.
- If there are still concerns then the whistle blowing procedure must be followed (see our Whistleblowing policy).

Further guidance

Guidance for safer working practice for those working with children and young people in education settings May 2019

Appendix 5 – Guidance for Investigation Reports

Adopted 5th September 2022

To be reviewed annually

Appendix 1

Considering whether suspension is appropriate

The suspension of an employee, particularly in situations of potential child protection allegations will have a significant impact on the individual and therefore it is essential that the facts of the case, as they are known, and alternative courses of action are carefully considered in deciding whether to suspend. The specific arrangements for the suspension of staff are set out in the pre-school's disciplinary procedures, but it should be recognised that suspension is a neutral act to protect the interests of both parties and not an assumption of guilt. It is also essential that the Disciplinary Procedures are followed in terms of providing appropriate support to the individual throughout the period of suspension.

The decision to suspend is taken by the Manager and/or the Owner and not by the Police, CYPE or LADO. However, Social Care, in collaboration with other agencies, may advise the Directorate and the pre-school of any action recommended to ensure the protection of children, protection of employees and safeguarding of information.

Being suspended or asked to refrain from work can give rise to great anxiety for the individual subject to the allegations. They may fear that colleagues and others within the school/community will have interpreted the very act of suspension as an indicator of presumed guilt from an early stage and may feel particularly isolated and vulnerable.

Any member of staff subject to an allegation should be encouraged to seek advice and support at the earliest opportunity from their professional association or trade union. It must also be acknowledged that the whole school/community may be affected by a staff member's suspension, and consideration should be given to necessary support strategies to address this.

The need for support is equally applicable when considering a staff member's return to work. Suspension should be retained for as short a length of time as possible and if it is agreed a staff member is to return to school/work, careful planning needs to take place as to how this situation can be managed as sensitively as possible.

Initial considerations

It may not be immediately obvious that suspension should be considered, and this course of action sometimes only becomes clear after information is shared with, and discussion had, with other agencies.

In some cases, early or immediate suspension may impede a Police investigation, and therefore the decision whether to suspend may have to be delayed until sufficient evidence has been gathered. Suspension should be avoided in such cases wherever possible and should not be seen as an automatic response to an allegation. This applies to the possible suspension of the Manager as well as other staff. Suspension should only follow discussion with the LADO. The decision to suspend remains the responsibility of the Manager and Owner.

When considering suspension, it is important to have regard to the following factors:

- The nature of the allegation
- Assessment of the presenting risk
- The context in which the allegation occurred
- The individual's contact with children
- Any other relevant information
- The power to suspend
- Alternatives to suspension

Suspension should only be applied if one or more of the following grounds apply:

- A child or children would be at risk
- The allegation is so serious that summary dismissal for gross misconduct is possible
- It is necessary to allow any investigation to continue unimpeded

Alternatives to suspension

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

- Leave of absence
- Undertaking different duties which do not involve direct contact with the individual child or other children
- Providing a classroom assistant or other colleague to be present throughout contact time.

Action Plan

The Children Act 1989 established the principle that the interests of the child are paramount. This, however, must be considered alongside the duty of care to staff. Any individual subject to allegations should, regardless of the decision to suspend or otherwise, be offered welfare support. Where possible, a means of monitoring the take up and effectiveness of welfare support without compromising confidentiality or trust should be sought. Where suspension is being considered, the duty of care requires the Manager/Owner to ensure that appropriate support is available to the member of staff. In the case of an allegation against the Manager, this responsibility lies with the Owner. Agreement must be reached with education personnel (and police where appropriate) as to how information will be shared and contact maintained with the member of staff throughout the investigative process. This should include agreement as to:

- How the member of staff will be kept updated about the progress of the investigation,
- How support and counselling are to be offered: and
- How links will be maintained with the pre-school so that the staff member is kept informed of other matters occurring within the pre-school.

Confidentiality

The Manager, Owner and Local Authority officers have a responsibility to safeguard confidentiality as far as is possible. Sensitive information must only be disclosed on a need to know basis with other professionals involved in the investigative process. Other people may become aware of the allegation and may not feel bound to maintain confidentiality. Therefore, consideration should be given on how best to manage information, particularly in relation to who should be told what, when and how. This is particularly relevant in respect of parents, carers and the media in light of new legislation and the anonymity clause (referenced in 1.4).

Planning and Recording

It is essential to record the decisions reached and the rationale behind them. Records should also be made of the agreed action and strategies to manage the situation. The plan should clearly indicate the following:

- Any restrictions to normal contact or activity,
- Issues of contact with children,
- Arrangements for monitoring and welfare support in relation to the member of staff.
- Monitoring the support available for the child.

It is important for the LADO to keep a record of the actions taken in the course of the investigation and, where relevant, the process and conclusion of suspension is undertaken as quickly and fairly as possible. If individuals have specific tasks or responsibilities to carry out, this should be noted and followed up. Agreed strategies for managing and sharing information should be included here. In addition, the member of staff should be informed of the decisions taken at the earliest opportunity by the employer

No action under the disciplinary procedure should be taken in circumstances which might interfere with the criminal investigation. Child protection and criminal investigations shall be treated as paramount and any further action under disciplinary procedures may therefore have to await full completion of the child protection and criminal investigations but will be undertaken as soon as possible.

Once any child protection investigation has been completed and the matter is not proceeding to court, a decision should be taken by the appropriate person in the setting, as whether to investigate under the disciplinary procedures.

At the request of the Owner, a nominated representative may be appointed to conduct the investigation where it is inappropriate for the Manager or other member of the school's leadership group to do so, e.g., where the Manager's knowledge might prejudice a fair hearing, where he/she is implicated or when the Owner believes it is in the best interests of the pre-school.

Following the internal investigation, the employer needs to come to a reasonably held view '**on the balance of probability**'. The disciplinary investigation must gather evidence objectively establishing the facts where possible and follow the principles of fairness, reasonableness and natural justice.

Where allegations of child abuse are received against an employee at the pre-school, the LADO will take responsibility for ensuring that relevant information, as defined by the CYPE and or Police, resulting from a child protection investigation is made available to the Manager in order to inform a decision about a possible disciplinary investigation.

Evidence derived from the child protection investigation or criminal investigation (e.g., statements, exhibits, video-recorded interviews with children) can be requested for use in subsequent disciplinary proceedings, particularly where the witnesses are the same, via relevant legal departments. (It should be noted that the Branch Crown Prosecutor will be cautious about releasing any prosecution material until the criminal proceedings have been concluded and will only consider doing so upon a valid request being made in writing.)

Where no criminal prosecution is pending or intended, advice from the Kent Police Solicitor's Department on the release of material should be sought through the LADO who has established a protocol with the Kent Police on behalf of the LA to ease this process. Witnesses may include Police Officers and social workers who have interviewed the child/ren. CYPE should usually release the minutes of strategy meetings and, where necessary, provide additional reports.

Whether it is appropriate to call children as witnesses will depend on their age, understanding and capability. However, the attendance of children at any hearing would be in extremely unusual circumstances and will only occur following careful consultation with all interested parties including the parents of the child/ren.

If a decision is taken to proceed with a disciplinary investigation, the employee should be informed, in writing, as required under the disciplinary procedure. It is advisable to confirm this position in a meeting with the employee and their representative.

If a decision is taken not to proceed with a disciplinary investigation, the employee should be invited to a meeting with a union representative or workplace colleague, to explain the circumstances of the decision and confirm this in writing.

Those involved in the investigation of the complaint or the continuing management of the situation at the pre-school cannot hear consequent disciplinary cases, since they may receive information that may prejudice a fair hearing of the complaint. The Owner or manager who are to hear disciplinary appeals must not be involved in the investigation of the complaint or the disciplinary hearing.

The setting will need to make appropriate arrangements to notify the parent/guardian of the child/ren of the outcome of the investigation/hearing and will take advice from the County LADO Service regarding the nature of information that can be disclosed.

Time-scales

DfE guidance states that "*the quick resolution of the allegation should be a clear priority to the benefit of all concerned. Any unnecessary delays should be eradicated.*"

- 1 If the nature of the allegation does not require formal disciplinary action, the Manager should institute appropriate action within **3 working days**.
- 2 If the evidence indicates that a disciplinary hearing may be required, then the process will be completed as quickly as possible and without unavoidable delay within the requirements and timescales of the pre-school's adopted disciplinary procedure. The employee must be kept regularly informed of the progress in this event.

Appendix 3

Referral to the disclosure and Barring Service

The Secretary of State's powers to bar or restrict a person's employment are contained in section 142 of the Education Act 2002. The relevant regulations, setting out the procedure to be followed now sit under the Vulnerable Groups Act 2006 (List 99 was replaced by the ISA Barring list which in turn has now been replaced by the **Disclosure and Barring Service**)

A relevant employer, or agent (eg a teacher supply agency), is required to provide a report to the DBS where they cease to use a person's services, or a person is dismissed or resigns before a disciplinary process is completed, because they are considered unsuitable to work with children, as a result of misconduct, or because of a medical condition that raises a possibility of risk to the safety or welfare of children. **A compromise agreement does not override the statutory duty to report the matter and such an arrangement should not be considered if the concern was of a safeguarding nature.**

These reporting arrangements apply to anyone who works in a school, including volunteers, regardless of what they do. They also apply to staff convicted of a criminal offence against children outside the work setting, when notification may be through the police.

Anyone subject to a direction under section 142 of the 2002 Act given on the grounds that they are unsuitable to work with children is also disqualified from working with children. 'Work' includes people in unpaid employment, employed under contract, people undertaking work experience and volunteers.

There is an additional requirement that residential special schools report such matters to Ofsted. It is the responsibility of the employing body to make this referral, and to inform the individual of its' statutory duty to do so.

Further information on the Disclosure and Barring Service and the process of referral to the barring list can be found at www.homeoffice.gov.uk/dbs

Appendix 4

Retention of Records

The Information Commissioner Code of Practice: Employment Records 2002 states that **“records of allegations about workers who have been investigated and found to be without substance should not normally be retained once an investigation has been completed. There are some exceptions to this where for its own protection the employer has to keep a limited record that an allegation was received and investigated, for example where the allegation relates to abuse and the worker is employed to work with children or other vulnerable individuals.”**

Records of investigations into alleged offences against children must be maintained, in order to identify patterns of concerns. A factual record of the details of all allegations and a written record of the outcome, will be retained. This information will be held by the County LADO Service in line with the responsibilities of the LADO function.

The employee and/or his/her representative will be informed that such records exist and will be able to seek disclosure within the parameters of the Data Protection Act by putting their request in writing through the appropriate channels.

Any records retained in relation to the outcome of the investigation and the member of staff's comments will be retained in line with Guidance provided by the Information Commissioners Office which states *'Until the person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer'*. **It is important to note DfE Guidance states “cases in which an allegation was proven to be false, unsubstantiated, or malicious should not be included in an employer's reference.**

Where a pupil has made an allegation, a copy of the statement or the record made of it, should be kept on the section of a pupil's child protection file, which is not open to disclosure, together with a written record of the outcome of the investigation. If there are related criminal or civil proceedings, records may be subject to disclosure; and, therefore, no assurances can be given on confidentiality. Any allegation made by a child that is deemed to be **malicious** after external scrutiny should be investigated further to establish what concerns led to such a situation developing. This is in the best interests of the child and the member of staff.