

# Medway Council

## A Guide to Managing Allegations against Members of Staff

<b>Title</b>	<b>Managing Allegations Against Staff Practice Guidance</b>
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# Managing Allegations against Staff and Volunteers Procedure

## 1. Nature of Allegations to Which These Procedures Apply

These procedures should be used in respect of all cases in connection with the person's employment or voluntary activity where it is alleged that a 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 he or she may pose a risk of harm to children

If the concern is not connected to the person's employment or work activity, these procedures may also apply:

- Where concerns arise about the person's behaviour towards his/her own children or any other child. The police and/or Children's Services should consider if they need to inform the person's employer and/or the Local Authority Designated Officer (LADO) in order to assess whether there may be implications for children with whom the person has contact at work
- If an allegation relating to a child is made about a person who also undertakes paid or unpaid care of vulnerable adults, Safeguarding Adults' procedures should be followed.

## 2. Historical /complex abuse

When allegations of historical and/or complex abuse are made and where the case involves an allegation against person(s) who work with children this procedure should also be followed.

## 3. Organisations to which these Procedures Apply

These procedures apply to all employers. The term employer refers to organisations that have a working relationship with the individual against whom an allegation is made. This includes:

- Organisations that use the services of volunteers or people who are self-employed, as well as service providers, voluntary organisations, employment agencies or businesses, contractors and fostering services
- Regulatory bodies such as Ofsted in the case of child minders, and others that may not have a direct employment relationship with the individual, but will need to consider whether to continue to use the person's services, or to
- Approve the person for work with children in future, or to deregister the individual.

In some circumstances, the term 'employer' may encompass more than one organisation e.g. where staff providing services for children in an organisation are employed by a contractor, or where temporary staff are provided by an agency. In those circumstances,

both the contractor or agency and the organisation in which the individual works need to be involved in managing the allegation.

#### **4. Summary of the process**

It is in everyone's interest to resolve cases as quickly as possible, consistent with a fair and thorough investigation. All allegations must be investigated as 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.

There may be up to three strands in the consideration of an allegation:

- A police investigation of a possible criminal offence
- Enquiries and assessment by Children Services about whether a child is in need of protection or in need of services, and
- Consideration by an employer / regulatory body of action in respect of the individual.

#### **5. Initial Considerations and LADO Consultation**

If there is an immediate risk, appropriate actions may need to be taken e.g. urgent involvement of police, removal of member of staff, securing evidence or urgent medical attention.

Any allegation or concern which arises should be reported immediately to the Senior Manager identified in the employer's internal procedures, unless that person is the subject of the allegation, or where their relationship with the subject could compromise their independence, in which cases it should be reported to the designated alternative, who should then inform the LADO. Where there is no Senior Manager e.g. a self-employed person, the matter must be reported directly to the LADO. Where staff receives an allegation against someone from another organisation, this should be reported directly to the LADO.

Staff who become aware of an allegation about a person from another agency should report this to their agency's Safeguarding Lead without delay who should in turn inform the LADO straight away.

The LADO should be consulted on all allegations that appear to meet the criteria, within **one working day**. This should take place before any investigations commence. In less serious cases, police and Children Services may not need to be involved but the LADO will provide an objective view.

#### **6. Referral to the LADO and Initial Actions**

Where appropriate a referral should be sent to the Local Authority Designated Officer, giving as much detail as possible. LADO referral must include the alleged adults full name, date of birth and home address. LADO Referrals should be made to **triage@medway.gov.uk** or contact us by telephone on **01634 331065**

The LADO will consult, as appropriate, with Children's Social Care and/or the Police to consider:

- If a Children Services or a police response may be appropriate and if a Strategy Meeting and/or an Joint Evaluation Meeting needs to be held
- If the allegation should be managed solely by the employer (with the proviso that, if further information comes to light suggesting a child protection response or criminal response may be necessary, then a further consultation will take place).

In some, more complex cases, or where it is unclear how the case should be taken forward and a Strategy Meeting or Joint Evaluation Meeting is not appropriate the LADO may call a Professionals Meeting with the employer, and occasionally, other professionals, to review the information and decide how best to proceed.

The Senior Manager must consider carefully whether the circumstances of the case warrant the person being suspended from contact with children in the workplace until the allegation is resolved. Suspension should not be the default position; an individual should only be suspended if there is no reasonable alternative.

The Senior Manager should inform the person subject to the allegation about the allegation as soon as possible **after consulting the LADO**. Where a strategy discussion is required, or police and / or Children Services may need to be involved, the Senior Manager must wait until the LADO has agreed with the agencies what information can be disclosed to the person subject to the allegation and by whom.

The Senior Manager will need to consider advising parents of an incident involving their child. This might be straight away, for example, if the child has been injured whilst in the organisation's care and requires medical treatment, or this may need to wait until initial consultation has taken place with the agencies involved, to determine what can be disclosed and by whom.

### **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 if seeking clarification;
- Make assumptions or offer alternative explanations;
- Promise confidentiality, but give assurance that the information will only be shared on a 'need to know' basis.

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;
- Immediately report the matter to the designated senior manager, or the deputy in their absence or; where the designated senior manager is the subject of the allegation report to the deputy or other appropriate senior manager.

### **Initial action by the designated senior manager**

When informed of a concern or allegation, the designated senior manager should not investigate the matter or interview the member of staff, child concerned or potential witnesses.

They should:

- Obtain written details of the concern / allegation, signed and dated by the person receiving (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.

The designated senior manager should report the allegation to the LADO and discuss the decision in relation to the agreed threshold criteria in Section 1 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.

The LADO and the designated senior manager should consider first whether further details are needed and whether there is evidence or information that establishes that the allegation is false. Care should be taken to ensure that the child is not confused as to dates, times, locations or identity of the member of staff.

If the allegation is not demonstrably false and there is cause to suspect that a child is suffering or is likely to suffer significant harm, the LADO should refer to Children's Services and ask them to convene an immediate strategy meeting / discussion:

- If a child is not believed to have suffered, or to be likely to suffer Significant Harm but a police investigation will continue, the LADO should conduct this discussion with the police, the designated senior manager and any other agencies involved to evaluate the allegation and decide how it should be dealt with;
- This Evaluation discussion should take place within one working day and must consider how to take matters forward in a criminal process parallel with a disciplinary process or whether any disciplinary action will need to await the completion of the police enquiries and/or prosecution. The progress should be reviewed by the police no later than four weeks after the initial evaluation meeting and thereafter at fortnightly or monthly intervals.

## 7. Referral Outcomes

### **No further action**

Where the LADO agrees that no further action is to be taken regarding the individual facing the allegation, the decision and justification should be recorded by both the Senior Manager and the LADO. The Senior Manager with the LADO should:

- Agree what information should be put in writing to the individual concerned by the Senior Manager
- Identify any action in respect of those who made the initial allegation and
- Consider what information should be shared with the child and their parents / carers and by whom.

Where the allegation does not require a formal process, appropriate action should be initiated **within three working days**.

### **Disciplinary / internal investigation**

Where an investigation by the police or Children Services is unnecessary, or has been completed, the Senior Manager will need to determine if any further disciplinary / internal investigation is needed. The LADO should discuss with the Senior Manager who will undertake this and in straightforward cases this would normally be a Senior Manager in the organisation. However, in some circumstances appropriate resources may not be available, or the nature and complexity of the allegation might require the employer to commission an independent investigation to ensure objectivity.

The investigating officer should aim to provide a report to the employer within **10 working days**. On receipt of the report, the employer should decide whether a disciplinary hearing is needed within two working days, and if a hearing is needed it should be held within 15 working days.

The outcome of any process must be reported to the LADO, who should consider with the Senior Manager what information should be shared with the child and their parents / carers and by whom.

### **Strategy Meeting**

If there is cause to suspect that a child has / is suffering or is likely to suffer significant harm, the LADO will immediately ask Children Services for a strategy meeting to be convened.

Whilst there may not always be further action required for Children Services, the importance of sharing full information about S47 investigation findings, action taken and assessment of risk cannot be underestimated if children are to be safeguarded adequately and employers are to be enabled to complete internal investigation and disciplinary processes. It is essential that outcome strategy discussions in these cases include both the employer and the LADO and that meetings be arranged to ensure full participation is enabled.

*Refer to link to 2.1.5*

### **Joint Evaluation Meeting**

Following the strategy meeting or in cases where a formal strategy discussion is not considered appropriate because the threshold of 'significant harm' is not reached, but a police investigation might be needed, the LADO should nevertheless conduct a similar discussion with the police, the employer, and any other relevant agencies to evaluate the allegation and decide how it should be dealt with.

## **8. Action following Strategy/Joint Evaluation Meeting**

Where the strategy or Joint Evaluation Meeting decides that an investigation by the police

Or Children Services is unnecessary; the LADO should discuss the next steps with the Senior Manager.

If a criminal investigation is required, the police will aim to complete their enquiries as quickly as possible, consistent with a fair and thorough investigation, and will keep the progress of the case under review. They should at the outset set a target date for reviewing progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to proceed with the investigation, charge the individual with an

offence, or close the case. Wherever possible that review should take place no later than **four weeks** after the strategy or Joint Evaluation Meeting. Dates for subsequent reviews, ideally at **monthly** intervals, should be set at the meeting if the investigation continues.

All agencies should continue to review the case and inform the LADO of any significant developments. The LADO will also regularly review the progress of the case.

## **9. Action following a criminal investigation or a prosecution or where Children Services have undertaken an assessment**

The police or the CPS should inform the LADO immediately of any case disposal decisions and court appearances and when the criminal investigation is completed. The police should inform the alleged victim and their parents / carers of the outcomes once the investigation and / or prosecution is concluded.

If the police and/or CPS decide not to charge the individual with an offence, or decide to administer a caution, or the person is acquitted by a Court, the police should pass all information they have which may be relevant to a disciplinary case to the Senior Manager without delay.

If Children Services have undertaken an assessment they should seek permission to share the information they have which may be relevant to a disciplinary case.

The Senior Manager should agree with the LADO to proceed as in 'No further action' or 'Disciplinary/Internal investigation' as above. The information provided by the police and/or Children Services should inform that decision. Action by the Senior Manager, including dismissal, is not ruled out. The options will depend on the circumstances of the case and will need to take account of the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

## **10. Action on Conclusion of a Case**

Where investigations are concluded, the LADO should consider convening a review discussion/meeting to share relevant information, categorise the allegation and agree any further action to be taken.

Where an internal/disciplinary process is concluded, the LADO should be informed of the outcome and should reach agreement with relevant professionals as to the category of the allegation.

### Allegation Categories

- **Substantiated:** there is sufficient identifiable evidence to prove the allegation
- **False:** there is sufficient evidence to disprove the allegation
- **Malicious:** there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false
- **Unfounded:** there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the allegation or was mistaken about what they saw. Alternatively they may not have been aware of the circumstances

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

For all allegations a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, a note of any action taken and the decisions reached should be kept on the confidential personnel file of the individual concerned and a copy of this should be provided to the individual.

If the allegation is substantiated and the person is dismissed or the employer ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the LADO should advise the employer whether they are under a statutory duty to make a referral to the Disclosure and Barring Service (DBS). The employer should also consider if a referral to any Professional Regulatory Body is required.

## **11. Action In Respect of Unfounded or Malicious Allegations**

For those cases where it is immediately clear that the allegation is unfounded or malicious then it is expected that they should be resolved **within one week**.

If an allegation is determined to be unfounded or malicious, the LADO should discuss the matter with children Services to determine whether the child concerned is in need of services, or may have been abused by someone else.

## **12. Learning Lessons**

At the conclusion of a case the LADO should consider whether there are any improvements to be made or lessons to be learned. This should include, where appropriate, consideration of the employer's procedures or practice to help prevent similar events in the future, including issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified.

# Allegations against People Who Work with Children Practice Guidance

## 1. Roles and Responsibilities

### Named Senior Officer

Each of the MSCB member organisations should identify a Named Senior Officer with overall responsibility for:

- Ensuring that their organisation deals with allegations in accordance with these procedures
- Resolving any inter-agency issues
- Liaising with the MSCB on the subject.

### Local Authority Designated Officer

The Local Authority has designated officers (**LADOs**) to:

- Be involved in the management and oversight of individual cases
- Provide advice and guidance to employers and voluntary organisations
- Liaise with the police and other agencies
- Monitor the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process.

**Contacts** 01634 331053  
01634 331126  
01634 331017  
01634 331965

### Police

The police have a **senior officer** to have strategic oversight of the arrangements to liaise with the MSCB & ensure compliance. Police should:

- Liaise with the LADOs
- Take part in strategy discussions / meetings and Joint evaluation meetings
- Review the progress of cases in which there is a police investigation
- Arrange for the sharing of information on completion of an investigation or prosecution.

### Senior Manager

All employers should have a designated **Senior Manager** in their organisations to whom allegations or concerns should be reported, who should follow these procedures. Employers should also designate another person to fulfil this role in the absence of the designated senior manager or where that person is the subject of the allegation.

All staff and volunteers should be made aware of who these persons are and of the organisation's internal procedures.

## **2. Regulatory Bodies**

The Senior Manager will be aware of the relevant Regulatory Bodies that need to be consulted and will take appropriate actions.

### **Ofsted**

Ofsted should be informed of:

#### **i) Providers of Early Years' & Childcare**

Registered providers must inform Ofsted of any allegations of serious harm or abuse by any person living, working, or looking after children at the premises (whether the allegations relate to harm or abuse committed on the premises or elsewhere).

Registered providers must also notify Ofsted of the action taken in respect of the allegations. These notifications must be made as soon as is reasonably practicable, but at the latest within 14 days of the allegations being made.

Registered providers must inform Ofsted of the details of any other significant event that is likely to affect the suitability of the provider or any person who cares for, or is in regular contact with, children on the premises. For example, this could be a change in circumstances affecting a provider's physical or mental ability to care for children

*The Childcare (General Childcare Register) Regulations 2008, the Statutory Framework for the Early Years Foundation Stage and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012.*

#### **ii) Children's Homes including Secure Children's Homes**

Providers of children's homes must notify Ofsted of any events or incidents including:

- Any serious complaint about the home or persons working there
- The instigation and outcome of any child protection enquiry involving a child accommodated at the home.

*The Children's Homes (Amended) Regulations 2011*

#### **iii) Residential Family Centres**

Providers of Residential Family Centres must notify Ofsted of any events or incidents including:

- Any serious complaint about the centre or persons working there
- The instigation and outcome of any child protection enquiry involving a child or a parent who is under the age of 18, accommodated in the centre.

*Residential Family Centres Regulations 2002*

*The Residential Family Centres (Amendment) Regulations 2013*

#### **iv) Independent Fostering Agencies**

Providers of fostering agencies must notify Ofsted of any events or incidents including:

- Any serious complaint about any foster parent approved by the fostering agency
- The instigation and outcome of any child protection enquiry involving a child placed with foster parents.

*Fostering Services (England) Regulations 2011*

#### **v) Adoption Support Agencies & Voluntary Adoption Agencies**

Providers of adoption support agencies are required to notify Ofsted of specific events:

- Any serious complaint about a prospective adopter approved by the agency where a child is placed for adoption with that prospective adopter by the agency
- Any serious complaint about a prospective adopter approved by the agency where a child is placed for adoption with that prospective adopter by another agency
- Instigation and outcome of any child protection enquiry involving a child placed for adoption by the agency

*Adoption Support Agencies (England) & Adoption Agencies Regulations 2005 & Adoption Regulations 2003*

### **3. Targets for Conclusion of Cases**

The following targets should be achieved in all but truly exceptional cases:

- 80 per cent of cases should be resolved within **one month**
- 90 per cent within **three months**, and
- All but the most exceptional cases should be completed within **12 months**.

### **4. Conflict of Interest/Impartiality**

Any person involved in the consideration and/or investigation of an allegation must declare any possible conflict of interest e.g. if the allegation relates to someone known to them such as a relative, friend, colleague, (including colleagues worked with regularly in another agency,) or someone from an organisation to which they are affiliated e.g. religious, social.

In all investigations and considerations of an allegation due regard should be given to ensuring objectivity and impartiality. Depending on the circumstances this may require, for example:

- Use of staff who are sufficiently separate from the line management of the person subject to the allegation
- An arrangement with the Police, Children Services team and/or LADO from a different part of the County or an arrangement with another police authority or local authority, or
- Use of an independent investigator.

## **5. Process**

### **a. Strategy Meeting**

Where it is suspected that a child is suffering, or is likely to suffer, significant harm the local authority is required by section 47 of the Children Act 1989 to make enquiries to enable it to decide whether it should take any action to safeguard and promote the welfare of the child. This meeting is convened by Children's Services.

### **b. Joint Evaluation Meeting**

Following the strategy meeting or in cases where a formal strategy discussion is not considered appropriate because the threshold of 'significant harm' is not reached, but a police investigation might be needed, the Local Authority Designated Officer should nevertheless conduct a similar discussion with the police, the employer, and any other relevant agencies involved with the child to evaluate the allegation and decide how it should be dealt with

Before any investigation commences the senior manager needs to establish if there is evidence / information to establish that the allegation is false or unfounded. The Joint Evaluation Meeting, chaired by the LADO, should share available information and consider whether a police investigation is needed and, if so, agree the timing and conduct of that. If the allegation is about physical contact, the strategy discussion or Joint Evaluation Meeting on should take into account the circumstances where staff are entitled to use reasonable force to control or restrain children and young people.

Where a police investigation is necessary the meeting should consider whether there are matters that can be taken forward in a disciplinary process in parallel with any criminal process, or whether any disciplinary action will need to await completion of any police enquiries or prosecution.

In Strategy and Joint Evaluation Meetings the agencies involved should share all relevant information they have about the person who is the subject of the allegation and about the alleged victim.

Wherever possible the police should obtain consent from all witnesses to share their statements with the employer and should ensure that all suspect interview records, case summaries and other relevant information is shared without delay at the conclusion of the investigation or court case.

Children Services should seek to obtain similar consent when making enquiries to determine whether a child or children named in the allegation are in need of protection or services, and should pass on relevant information without delay, including consent for release of medical reports relevant to any disciplinary procedures.

## **6. Suspension**

The possible risk of harm to children posed by the accused person needs to be effectively evaluated and managed in respect of the child(ren) involved in the allegations. In some cases that will require the Senior Manager to consider suspending the person until the case is resolved. Suspension must not be an automatic response

when an allegation is reported. If the Senior Manager is concerned about the welfare of other children in the community or the employee's family, those concerns should be reported to the LADO, Children Services or police but suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension should only be considered in cases where:

- There is cause to suspect a child or other children at the workplace is or are at risk of significant harm, or
- The case is so serious that it might be grounds for dismissal.

However, a person should not be suspended automatically. The Senior Manager must consider carefully whether the circumstances of the case warrant a person being suspended from contact with children at the workplace until the allegation is resolved, and may wish to seek advice from their personnel adviser and the LADO.

The Senior Manager should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. Based on an assessment of risk, the following alternatives should be considered by the case manager before suspending an individual.

- Redeployment with the establishment so that 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
- Moving the child or children where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted, or
- Temporarily redeploying the member of staff to another role or in a different location.

Where it has been deemed appropriate to suspend the person, written confirmation should be sent within one working day, giving as much detail as possible for the reasons for the suspension and the suspension should be reviewed on a regular basis.

Only the organisation itself has the authority to suspend a member of staff; however, the Senior Manager should give appropriate weight to any recommendations of the Joint Evaluation Meeting. If the organisation decides not to suspend against the recommendation of the Joint Evaluation Meeting, Police and Children Services will need to consider any other actions that they may need to take.

## **7. Supporting Those Involved**

**The child and their parents/carers:** Where appropriate, consideration should be given to informing the child / parent / carer about the allegation and who should do this. The senior manager should also keep them up to date with the progress of the case and the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process in confidence.

In cases where a child may have suffered significant harm, or there may be a criminal prosecution, Children Services or the police as appropriate, should consider what

support the child or children involved may need. Similarly, where a child has been harmed the employer should consider what support they should offer the child.

**The person subject to the allegation:** Employers have a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations and disciplinary process. Individuals should be informed of allegations as soon as possible. Where Children Services or the police are involved they must be consulted before any information is shared.

The employer should also consider what other support is appropriate for the individual. They should be advised to contact their trade union representative, if they have one, and given a named point of contact in the organisation. They should also be given access to welfare counselling or medical support where this is provided by the employer.

Consideration needs to be given when employees are suspended to ensure that they are kept informed of both the progress of their case and current work related issues. Social contact with colleagues and friends must not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence. The individual should be advised not to discuss the case with colleagues.

Where it is decided, on the conclusion of the case, that the person who has been suspended can return to work, the Senior Manager should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a very stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The Senior Manager should also consider how the person's contact with the child or person who made the allegation can best be managed if s/he is to continue working with them.

## 8. Confidentiality

It is extremely important that, when an allegation is made, every effort is made to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. In accordance with the Association of Chief Police Officers (ACPO) guidance the police should not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. In exceptional cases where the police depart from that rule, e.g. an appeal to trace a suspect, the reasons should be documented and partner agencies consulted before hand.

At the strategy/evaluation discussion the Senior Manager should take advice from the LADO, Police and Children Services to agree the following:

- Who needs to know and, importantly, exactly what information can be shared
- How to manage speculation, leaks and gossip
- What, if any, information can be reasonably given to the wider community to reduce any speculation, and
- How to manage press interest if and when it should arise.

**Teachers:** The Education Act 2011 introduced reporting restrictions preventing the publication of any material that may lead to the identification of a teacher who has been

accused by, or on behalf of, a pupil from the same school. The legislation makes it an offence for any matter relating to the person to be included in any publication if it is likely to lead members of the public to identify the person as the teacher who is the subject of the allegation. Publication is defined as: any speech, writing, relevant programme or other communication in whatever form, (including social media) which is addressed to the public at large or any section of the public. It does not include an indictment or other document prepared for use in particular legal proceedings, nor a document published by the regulator of a profession of which the person who is the subject of the allegation is a member in connection with disciplinary proceedings in relation to the person.

Any person may make an application to a magistrates' court for an order dispensing with the restrictions and the court may make an order dispensing with these to the extent specified in the order, if it is satisfied that it is in the interests of justice to do so, having regard to the welfare of the person who is the subject of the allegation, and the victim of the offence to which the allegation relates.

## **10. Referrals to the Disclosure and Barring Service (DBSs) and/or Regulatory Bodies**

The restrictions cease to apply:

- Once the teacher has been charged with an offence
- If the Secretary of State publishes information about the person who is the subject of the allegation in connection with the investigation of disciplinary cases
- If the person who is the subject of the allegation waives their right to anonymity, or
- Gives their written consent for another person to do so.

## **9. Resignations and 'Settlement Agreements'**

The fact that a person tenders his or her resignation, or ceases to provide their services, must not prevent an allegation being followed up in accordance with these procedures. It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to cooperate with the process. Wherever possible the person should be given a full opportunity to answer the allegation and make representations about it. The process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be regarded as substantiated on the basis of all the information available should continue even if that cannot be done or the person does not cooperate. It may be difficult to reach a conclusion in these circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

By the same token so called 'settlement agreements', (previously known 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 any future reference, must not be used in these cases. A settlement agreement will not prevent a police investigation where that is appropriate nor does it override the statutory duty to make a referral to the DBS.

## 10. Referrals to the Disclosure and Barring (DBSs) and/or Regulatory Bodies

### a. DBS

Under the Safeguarding and Vulnerable Groups Act 2006 there is a **legal duty** for regulated activity providers and personnel suppliers to make a referral to the DBS where they have permanently removed a person from regulated activity through dismissal or permanent transfer from regulated activity (or would have done if the person had not left, resigned, retired or been redundant), and the person has carried out one of the following:

- Been cautioned or convicted of a relevant (automatic barring) offence, or
- Engaged in relevant conduct in relation to children that has harmed a child or put them at risk of harm, or
- Satisfied the Harm Test in relation to children (i.e. No action or inaction occurred but the present risk that it could was significant). To satisfy the harm test there needs to be credible evidence of risk of harm to children such as statements made by an individual regarding conduct / behaviour etc.

The DBS can only bar a person from working within regulated activity with children or adults if it is believed the person is or has been, or might in the future be, engaged in regulated activity. The only exception to this is where a person is cautioned or convicted for a relevant (automatic barring) offence and is not eligible to submit representations against their inclusion in a barred list.

Additionally, where a person is cautioned or convicted of a relevant (automatic barring) offence with the right to make representations, the DBS will ask the person to submit their representations and consider them before making a final barring decision.

Local authorities, schools, FE colleges and other bodies all have a statutory duty to make reports, and to provide relevant information to the DBS. Referrals should be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services.

Under the Safeguarding and Vulnerable Groups Act 2006 the following groups have a **legal power** to refer:

- Local authorities
- Keepers of Registers and
- Supervisory Authorities.

This should be considered where additional, relevant information is held in addition to any to that available from the court process and / or court outcome.

## **b. Regulatory Bodies**

Employers should refer to the guidance published by their relevant regulatory body to determine if and when any allegation of professional misconduct should be reported to them.

## **11. Record Keeping**

All those involved in dealing with allegations against persons working with children, including the person to whom the allegation is made in the first instance, should make clear, accurate and comprehensive records which should be signed, dated and timed. The record should provide details of the allegation, how it was followed up and resolved and notes of any action taken and decisions made. A comprehensive summary of this should be made and a copy kept on the personnel file and copy of given to the individual. Comprehensive notes should be made of any strategy and evaluation discussions which are agreed by and distributed to all present. These should be held on the confidential personnel file but not shared with the individual 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 in cases where future DBS Disclosures reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation resurfaces after a period of time.

The record should be retained at least 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. The Information Commissioner (p.35, paragraph 2.13.1) has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on employment retention.

For teachers, details of allegations that are found to have been malicious should be removed from personnel records and this is good practice for all employers to consider.

## **12. References**

References should include accurate information taken from the personnel file and individual organisations need to have appropriate consideration and procedures to cover providing information in references in relation to allegations including where sanctions are 'spent'.

In addition, for teachers, where the allegation was proven to be unsubstantiated, unfounded or malicious, information should not be included in employer references. A history of repeated concerns or allegations which have all been found to be unsubstantiated, unfounded or malicious should also not be included in any reference.