

Guidance for Schools on Managing Allegations against those who work or volunteer with Children

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Abbreviations used within this guidance:

LADO	Local Authority Designated Officer
NYSCP	North Yorkshire Safeguarding Children Partnership
KCSIE	Keeping Children Safe in Education
NYCC	North Yorkshire County Council
DBS	Disclosure and Barring Service
TRA	Teaching Regulation Agency

Guidance for Schools on Managing Allegations against those who work or volunteer with Children

1. Introduction

- 1.1 All schools are required to have procedures in place so that any allegations of abuse made against a person who works with children and young people are dealt with fairly, quickly and consistently, in a way that provides effective protection for the child and, at the same time, supports the person who is the subject of the allegation.
- 1.2 This guidance reflects and supplements the North Yorkshire Safeguarding Children Partnership (NYSCP) "*Procedure for Managing Allegations Against Those Who Work or Volunteer with Children*" and should be read in conjunction with that procedure. As such it is based on the statutory guidance contained in "Working Together to Safeguard Children" and "Keeping Children Safe in Education" (KCSIE). Should any variance exist between these documents then the statutory guidance will apply.
- 1.3 This guidance has been developed to help schools:
- ensure that allegations are dealt with quickly and in a fair manner
 - prevent unsuitable people from working with children and young people
 - promote safe practice and challenge poor / unsafe practice
 - contribute to effective partnership working and information sharing

2. Definitions

- 2.1 All references in this guidance to 'employees' should be interpreted as meaning all paid or unpaid staff, including volunteers and Governors and Directors and, Trustees for Academy Trusts. The principles will also apply to those people working in the school but who are employed by another organisation or are self-employed e.g. supply staff, third-party employees, etc. however, please see section 12 for further details.
- 2.2 People whose role places them in a 'position of trust' (as defined in "Working Together") will be considered within the remit of this guidance, even if they are themselves, under the age of 18.
- 2.3 All references to a child, children or young people refers to people under the age of 18 years. In this guidance all will be referred to as child or children.
- 2.4 Working Together and KCSIE do not provide a definition of working with children. Where there is a doubt whether the individual against whom the allegation has been made works with children, advice must always be sought from the Local Authority Designated Officer (LADO). The LADO will determine this on a case-by-case basis and they will apply a wider definition than just those who are in Regulated Activity. The role of the LADO is detailed in paragraph 3.2 below.

3. Roles & Responsibilities

- 3.1 The roles and responsibilities of the statutory agencies, in relation to dealing with allegations, are detailed in the NYSCP procedures detailed in paragraph 1.2 above.

Local Authority Designated Officer (LADO)

- 3.2 The role of the **Local Authority Designated Officer (LADO)** is to provide management and oversight of all cases where allegations are made against staff in line with the NYSCP procedure (referred to in point 1.2). This includes advising employers, convening joint meetings, maintaining records and liaising with relevant parties.
- 3.3 The LADO will monitor and review cases on a regular basis depending on its complexity, but usually on a monthly basis. Where the target timescales (see paragraphs 6.8 - 6.9) for completion cannot be met, the LADO will record the reasons for this which will then be outlined and recorded at the final review.
- 3.4 The LADO does not investigate allegations; this responsibility lies with the police, where there is the possibility that a criminal offence has been committed, or the school in line with internal procedures. It is permissible for a school to commission an independent investigation should they wish.
- 3.5 The Duty LADO can be contacted on 01609 532477.

Designated Senior Manager

- 3.6 All schools must appoint a Designated Senior Manager to whom allegations or concerns should be reported. In addition all schools must appoint a Deputy to whom reports should be made in the absence of the Designated Senior Manager or where that person is the subject of the allegation or concern. This is not to be confused with a school's Designated Safeguarding Lead.
- 3.7 The Designated Senior Manager will usually be the Headteacher of the school. In a maintained school, the Deputy Designated Senior Manager will usually be the Chair of Governors. Academy Trusts will need to determine this role taking into account their schemes of delegation. The name, contact arrangements and an explanation of the role of the Designated Senior Manager and their Deputy must be regularly communicated to all employees within the school, usually through both the induction process and safeguarding training.
- 3.8 The role of the Designated Senior Manager is to:
- Be the first point of contact for relevant allegations
 - Ensure that the school operates to the NYSCP procedures and this guidance
 - Liaise with the LADO on referred cases

- Ensure appropriate referrals are made to the Child Care Duty Team and/or Police or Emergency Duty Team if they are made aware of the issue out of normal working hours when the LADO is not available (follow up with LADO next working day)
- Ensure allegations are investigated in a reasonable and proportionate manner
- Ensure any referrals are made to the DBS or regulatory bodies e.g. Teaching Regulation Agency (see section 11 below)

4. Application

4.1 The NYSCP procedures and this guidance **must be applied** where it is alleged that a person who works or volunteers with children has:

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

4.2 Harm is not defined within KCSIE but is considered to include allegations of sexual, physical, emotional harm and/or neglect. The Children Act 1989 as amended, states ‘Harm means ill-treatment or impairment of health or development including for example, impairment suffered from seeing or hearing the ill-treatment of another’.

4.3 Further information and examples of relevant behaviour are available in the NYSCP procedures. When it is not clear whether the behaviour constitutes harm the school must seek advice from the LADO.

4.4 The school **should consider** also using the NYSCP procedures and this guidance when there is an allegation that any person who works with children has behaved in a way that raises safeguarding concerns. This may include concerns regarding the employee’s conduct or relationships outside the workplace, for example:

- there are concerns about a person’s behaviour or conduct in their personal or professional life that might indicate their unsuitability to work with children e.g. possession of a weapon, domestic abuse and/or the sexual or physical assaults of an adult
- concerns arise about a person’s behaviour with regard to his / her own children e.g. when, as a parent or carer, children have become subject to Child Protection Procedures
- where they are closely associated with someone in their personal lives (e.g. partner, member of the family or other household member) who may present a risk of harm to a child

4.5 Referring these issues will enable an assessment to be undertaken where there are concerns around the transferability of risk to children they work or volunteer with.

- 4.6 The NYSCP procedures can also be used where there appear to be patterns of behaviour that cause concern.
- 4.7 The NYSCP '*Non-Recent, Organised and Complex Procedures*' will apply when there are historical allegations (where the reported abuse occurred over one year before it was disclosed) or there are signs of organised or widespread abuse and/or the involvement of other perpetrators or institutions.

5. Managing Allegations

Identification and initial action

- 5.1 There are a number of sources from which a complaint or an allegation might arise, including from both children and adults.
- 5.2 It may not always be clear whether an incident constitutes an allegation, whether a child has been harmed or the person poses a risk of harm. In such cases the Designated Senior Manager must seek advice from the LADO who will determine whether the alleged conduct potentially meets the threshold for consideration under the NYSCP procedures.
- 5.3 A clear distinction should be made between an allegation and a concern about the quality of care or practice or a complaint.

Initial Action by a Person Receiving or Identifying an Allegation or Concern

- 5.4 Allegations may be reported to anyone within the school and it is important for that person to know what they should do in this situation. Employees should be familiar with the school's safeguarding policy and receive regular training in line with the statutory requirements in KCSIE. Those receiving the allegations must treat the matter seriously and keep an open mind.
- 5.5 Where the allegation involves an immediate risk to a child or a safeguarding concern that requires an urgent response then this must be reported immediately to the police by calling 999 (emergency) or 101 (non-emergency) in line with the school's child protection or safeguarding procedures.
- 5.6 In all other cases the individual should:
- Take any immediate actions as necessary e.g. seek urgent medical attention, remove the member of staff from the area, secure evidence, etc.
 - Immediately report the matter to the Designated Senior Manager, or Deputy in their absence or where the Senior Manager is the subject of the allegation.
 - Make a written record of the information (where possible in the child's/adult's own words), including the time, date and place of incident, persons present and what was said
 - Sign and date the written record

Initial Action by the Designated Senior Manager

- 5.7 When informed of a concern or allegation, the Designated Senior Manager should review the information and determine whether:
- The issue meets the harm/risk of harm threshold and is therefore an allegation; or
 - The issue may have met the harm/risk or harm threshold and whether advice from the LADO is required; or
 - The issue does not meet the harm/risk of harm threshold and does not need to be referred to LADO (in such cases it may still be necessary to address the issue through internal processes or procedures e.g. disciplinary, capability, complaints procedure)
- 5.8 If the Designated Senior Manager is unclear whether the harm threshold has been met they should make early enquiries with the LADO so that the timescales for referral can be met should the concern become an allegation.
- 5.9 The LADO may advise there needs to be some fact finding to be undertaken by the school which will contribute to the LADO determination of whether the threshold has been met. This fact finding is distinct from a formal investigation which may later be required.
- 5.10 Where the harm threshold is met, the Designated Senior Manager **must make a referral to the LADO within one working day**. Reporting should not be delayed and the individual against whom the allegation has been made should not be notified until advice has been sought from the LADO. Equally, witnesses should not be formally approached for their account of the events, however, an initial written summary may be obtained in line with the school's standard practices.
- 5.11 Referrals to the LADO should be made on the NYCC Managing Allegations against Staff Form which is available from the NYSCP website and sent to safeguardingunit@northyorks.gov.uk.
- 5.12 In all cases, the LADO will advise the Designated Senior Manager, taking advice from the Police and children's social care where necessary, what information can initially be shared with the employee and any child, parent and/or carer and/or third party.
- 5.13 The Designated Senior Manager must also consider any immediate actions which need to be taken in relation to the employee. Appropriate actions will depend on the facts of each individual case and the employee's existing awareness of the situation. Actions may include removing an employee from their normal duties or sending them home whilst advice can be sought and initial investigations undertaken. It may be necessary, as the situation develops, to consider suspension from work and further information regarding this is available at paragraphs 6.14 to 6.22.

- 5.14 Early consideration must also be given to the welfare of the employee against whom the allegation has been made and what mechanisms will be put in place to support them (see paragraphs 7.2 and 7.3 for further guidance). It may also be necessary to provide support to other employees who may be involved, possibly as a witness to an incident or event. Where they are members of a union or professional association, employees should be encouraged to contact them for advice and support. Where a representative is available within school, it may be appropriate to allow the employee to be accompanied at any meetings. This is in addition to the employee's right to be accompanied at any meetings held under formal policies e.g. disciplinary, capability, attendance management.
- 5.15 Any initial actions by the school must not prejudice any police or social care investigations and, where possible, advice should be taken from the LADO before sharing any information with the employee or any further fact finding takes place, for example approaching witnesses, etc. However, in some situations the employee may already be aware of an allegation as a consequence of a specific incident in school.
- 5.16 It is the responsibility of the school to ensure there is effective communication with the employee and they should share as much information as possible with the individual, subject to any advice from the LADO. Schools are strongly advised to maintain records of the information they share, and their communications, with employees, possibly in the form of file-notes (see also section 7).

Allegations Meeting/Discussion

- 5.17 The LADO will determine if the threshold within the NYSCP procedures is met. They will then decide if a face-to-face allegations meeting is required or whether information can be shared effectively between relevant parties through a discussion. The LADO will record details of any discussions and share these with the parties involved. The school is advised to maintain a record of all discussions and communications, including via the phone and by e-mail, in its case files.
- 5.18 An allegations meeting will normally only be convened where there is an allegation of a possible criminal offence and police are attending and/or where it is agreed that the case is complex. Where a strategy meeting (convened by NYCC CYPS Children and Families Service) is held, the LADO will attend and the allegations meeting will follow the strategy meeting.
- 5.19 Where an allegations meeting is required it will be arranged to take place **within 3 working days** of the allegation being referred to the LADO.
- 5.20 Prior to the meeting, it should be agreed what information can be shared with the employee, the child and their parent or carer. It should also be agreed what information needs to be brought to the meeting by those attending. For the school this is likely to include any relevant information regarding the child/ren

involved and information, previous allegations or concerns about the person who is the subject of this allegation.

- 5.21 There will be a requirement to share general employee information at the allegations meeting. This is usually held on the confidential personal file and relevant documents are likely to include references, employment history, outcome of pre-employment vetting checks including details of the DBS, etc. Any information about other roles working with children which the employee holds outside of school, either paid or voluntary, may also be relevant e.g. other jobs, sports coaching, scouts and girl guiding, etc. The school may also be asked if they are aware whether the employee has any children or lives with any children. Schools are not required to make enquiries to establish this if no information is readily available within school.
- 5.22 The allegations meeting will be chaired by the LADO. Other attendees will be determined by the case but will usually include:
- Relevant social work manager (if relevant)
 - Police representative (if potential criminal offence)
 - Designated Senior Manager/Deputy from the school
 - The school's HR advisor
 - Those responsible for regulation and inspection, where applicable
 - Other employers where there are multiple relevant employments
 - Other relevant parties as determined on a case-by-case basis
- 5.23 It is important that the school gets the information they require and appropriate direction during the course of an allegations meeting or discussion. This may include some or all of the following:
- Whether police or social services investigations are necessary
 - What impact these investigations will have on the school's internal processes and investigations
 - How information regarding progress of the case will be shared and named contacts from other agencies from whom updates can be sought
 - What information can be shared with the employee
 - The views of partner agencies around whether suspension is recommended (though this is ultimately a decision for the school – see paragraph 6.14 to 6.22)
 - What information can be shared with the child/parents/carers and third parties
 - What are the parameters of any school investigation i.e. where there are multiple allegations which of these meet the LADO threshold and for them to be defined and recorded in the minutes (see also paragraph 5.24)
 - Whether a referral should be made in terms of interim prohibition to a regulatory body and the school's responsibilities for doing this (see section 11)
 - Whether there are any relevant media restrictions
 - Dates of future meetings

5.24 In cases where a number of allegations are made against an employee it may be that not all meet the threshold under the NYSCP procedures. The school may still need to address these other allegations through their internal procedures. However, it should ensure it is clear around which allegations do and which don't meet the threshold. It may be that both types of allegations are investigated through the same process, for example through a single disciplinary investigation and hearing, but only information relating to relevant allegations should be shared as part of the LADO review process. It must also be clearly explained to the employee how each allegation is being considered and which ones meet the threshold and will be categorised under the NYSCP procedure.

6. Interaction with the School's Policies

Initial considerations

6.1 Following consideration by the LADO and when the school has been notified that it may take action under its own procedures, it should consider what action is appropriate based on the facts of the case, including whether precautionary action or suspension is appropriate.

6.2 In many cases it may be determined that investigation and/or action is required under the school's disciplinary or capability processes or complaints procedure. In some cases, however, it may be that other informal actions are appropriate. The school should take advice from its HR advisor when determining the appropriate action.

6.3 In all cases, the policy or process followed may be amended to take into account the timescales and other requirements detailed in the NYSCP procedures and this guidance.

Employee representations

6.4 All employees against whom an allegation has been made, which the LADO has advised meets the threshold, should be provided with the opportunity to respond to the allegation and make representations. It is the school's responsibility to ensure that the employee's voice is heard and that this is fed into the process before the allegation is categorised. Employees should be advised to contact their union or professional association for advice and support in doing this.

6.5 How this is done will depend on the process being followed. Where the allegation has been investigated under the school's disciplinary policy, all the evidence against the employee will be shared with them through the hearing process and they will have had the opportunity to respond to this. This information may then be shared at the final review meeting.

6.6 However, if the issue has been dealt with through other processes or not through a formal process, the school must give the employee the opportunity to respond to the allegations. Sufficient information regarding the allegation and

any fact finding or investigation, should be shared with the employee to enable them to make a full response. The employee should be provided with a copy of the school's response that it intends to share with the LADO. Employees may choose to share any of this information on a confidential basis with their union or professional association representative.

- 6.7 This process must be documented and the school must ensure sufficient information, either in summary form or the written records, is shared at the final review meeting prior to a categorisation decision being made.

Investigatory process

- 6.8 If further investigation is needed to decide upon disciplinary action, the school should consider if it has appropriate resources or whether it should commission an independent investigation because of the nature or complexity of the case or to ensure objectivity. The investigation should not be conducted by a relative or friend of the member of staff or an individual who has any other conflict of interest.

- 6.9 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.

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

- 6.11 In employment generally, an employer does not have to wait for the police to complete their investigations before taking action against an employee. However, this needs to be managed in partnership with other agencies and it is recommended that HR advice is sought. It is also worth noting that the outcome of a disciplinary process will not necessarily agree with the outcome of criminal proceedings due to different measures of evidence, and thresholds for criminal and disciplinary findings.

Target Timescales

- 6.12 The indicative timescales for the investigation and categorisation of allegations are contained within the NYSCP procedures. The school should ensure that allegations are investigated as a priority to avoid unnecessary delay, though the time taken to resolve individual cases will depend on a range of factors including the nature, seriousness and complexity of the allegation.

- 6.13 In the event that there are any delays in the process the school should notify the employee of the reasons for these.

Precautionary Action / Suspension

- 6.14 It is for the school to determine whether it is necessary to take precautionary action in relation to the employee whilst the case is being investigated, though consideration should be given to the views of partner agencies involved in the allegations meeting/discussion. In all cases the school should take advice from their HR advisor.
- 6.15 When determining any precautionary action the school should consider the alternatives to suspension, based on an assessment of risk, as follows:
- Redeployment so the individual does not have direct contact with the child/ren involved
 - Provision of an assistant to be present when the individual has contact with children
 - Redeployment to alternative work so the individual does not have unsupervised access to children
 - Temporary redeployment to another role in a different location or to work from home
- 6.16 Suspension should only be considered where:
- There is cause to suspect a child or other children at the place of employment is/are at risk of harm
 - If the case is so serious that it may be grounds for dismissal
 - There are significant concerns that the employee will impede the workplace investigation which cannot be mitigated through other means (see paragraph 6.15 above)
- 6.17 When determining whether suspension is required, schools should give due consideration to the potential permanent professional reputational damage to employees that can result from suspension where an allegation is subsequently not substantiated.
- 6.18 Where there are to be enquiries by children's social care or the Police, the LADO will canvass their views whether the employee needs to be suspended from contact with children and the school must give appropriate weight to this advice when considering its decision.
- 6.19 The arrangements for suspension should be in line with the school's disciplinary policy and be on full-pay and without prejudice. However, for allegations covered by the NYSCP procedure, a suspension may take place prior to any decision being made to commence a disciplinary process. Where a union or professional association representative is available within school, it may be appropriate to allow the employee to be accompanied at any suspension meeting.
- 6.20 Where suspension is considered necessary, the Designated Senior Manager must record the rationale and justification for this decision and provide a copy

of this to the LADO. The written record should also include what alternatives to suspension were considered and, if they were rejected, why.

- 6.21 Written confirmation of any suspension must be sent to the employee within **one working day**, giving as much detail as appropriate regarding the reasons for the suspension. At the point of suspension, the employee should be informed of their named contact within the school and provided with that person's contact details.
- 6.22 Any suspension should be kept under review and regular contact maintained with the employee to inform them of progress, though it may not always be possible to share full details of a case.
- 6.23 When a suspended person is to return to work, the school should consider what help or support might be appropriate, and also how best to manage the employee's contact with any child/ren concerned.

7. Information sharing

- 7.1 It is the responsibility of the school to inform relevant parties e.g. parents/carers, the employee, etc. of allegations, how these are being dealt with and the progress of the case. However, **guidance must always be sought from the LADO regarding what information can be shared, when and with whom.** The school may also wish to take legal advice around sharing information.

Communicating with the Employee

- 7.2 The school has a duty of care to any employee against whom an allegation has been made and has a responsibility to keep them informed. However, in matters covered by the NYSCP procedures, the requirements of the police and/or social care investigations will take precedence.
- 7.3 Subject to any restrictions on the information that can be shared, the Designated Senior Manager should, as soon as possible, inform the referred person about the nature of the allegation, how enquiries will be conducted and the possible outcome. The referred member of staff should be:
- treated fairly and honestly and helped to understand the concerns expressed and processes involved
 - kept informed of the progress of the case and given the opportunity to participate fully in any investigation and to make full representation (see paragraphs 6.4 to 6.7)
 - made aware of the possible outcome of the processes and the implications in terms of references and referrals to regulatory bodies and/or the DBS
 - notified of any precautionary action which is to be taken, including, in the case of suspension, their nominated contact officer and their contact details
 - advised to contact their union for advice and support if they are a member
 - informed of any support arrangements which will be put in place or is available to them, including through the school's Employee Assistance Programme

7.4 Schools are strongly advised to maintain records of the information they share and their discussions with employees throughout the process, possibly in the form of file-notes.

8. Final Review Meeting / Discussion

8.1 On the conclusion of the case, there will be a final LADO review meeting / discussion involving all relevant parties who were involved in the initial allegations meeting / discussion.

8.2 The final review meeting / discussion will consider relevant information gathered during the investigation and the outcome of that investigation. The main purpose of the final meeting is to categorise the allegation(s) in line with KCSIE.

8.3 At the meeting, the school will be required to share information regarding the actions and investigations it has taken and the outcome of these processes. The school should be clear about the evidence it has to support any information shared. For example, the school must explicitly state where it has no written records around historical issues which have been shared verbally and explain the source of that information.

8.4 Where the outcome of a disciplinary process may have a direct impact on the categorisation of the allegation, it is recommended that the notification of the disciplinary decision to the employee is delayed until after the final review meeting/discussion. The employee must be informed of this delay and the reasons for it at the earliest opportunity. In such cases, the Chair of the disciplinary panel may be involved in the final review meeting/discussion.

8.5 The possible outcomes are below:

No further action – the allegation, after consideration, does not meet the criteria for the NYSCP procedures

Substantiated – there is sufficient evidence to prove the allegation

False – there is sufficient evidence to disprove the allegation

Malicious – there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive

Unfounded – to reflect cases where there is no evidence or proper basis which supports the allegation being made

Unsubstantiated – there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

8.6 The final categorisation of the allegation will be a multi-agency decision based on views of the parties involved in the final review meeting / discussion.

8.7 The school is required to inform the employee, in writing, of the outcome and categorisation of the allegation on the conclusion of the case. It is recommended that the school takes HR advice when compiling this notification. The notification will include:

- A comprehensive summary of the allegation
- Details of how the allegation was followed up and resolved
- The outcome into which the allegation has been categorised
- Relevant actions and decisions taken by the school
- Whether the allegation will be referred to in future references from the school
- How long any records will be retained by the school
- If there will be a referral to DBS and / or any regulatory body by the school

8.8 If any individual considers, after the conclusion of a case, that there exists substantial new and/or additional information that was not available at the final review meeting they can write to the LADO Manager. Please see the NYSCP procedures for further information.

9. Record Keeping

9.1 Allegations that are found to have been malicious must be removed from the employee's personal file. The employee should be informed what information will be removed and what information will be retained on their personal file and provided with a copy of this (see paragraph 8.7).

9.2 In all other cases the details in paragraph 8.7 should be kept on the personal file. The purpose of the record is to:

- enable accurate information to be given in response to any future request for a reference (see section 10 below)
- provide clarification in cases where a future DBS disclosure reveals information from the police that an allegation was made but did not result in a prosecution
- prevent unnecessary reinvestigation if an allegation re-surfaces after a period of time.

9.3 Schools are also strongly advised to maintain detailed records of their communications with the employee relating to the case. This should include e-mails and a record of telephone calls including the date of the call and the issues discussed.

9.4 In line with the statutory requirements within KCSIE, the records must be retained until the employee subject to the allegation has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer. This is potentially a longer retention period than is usual for personal files which is a minimum of six years from the date of leaving.

- 9.5 Records relating to allegations against volunteers or those not directly employed must be retained by the school on the same basis, though held on other confidential case files.
- 9.6 There is an additional requirement from the Independent Inquiry into Child Sexual Abuse (IICSA) that no records within the scope of the inquiry should be destroyed. This relates to records in respect of child sexual abuse. However, where the allegation is of physical abuse there needs to be consideration as to if they may have been sexually motivated and, if so, these records must also be retained.
- 9.7 The school should take into account data protection legislation and the requirements detailed above to ensure appropriate records are retained.

10. Employment References

- 10.1 **Substantiated allegations** must be included in any employment references provided by the school.
- 10.2 The allegation, or history of repeated concerns or allegations, must not be included in references where there has been **no further action** or the outcome was **false, unsubstantiated, unfounded or malicious**.
- 10.3 In every case where possible, employees must be informed of the information which will be included in employment references. This will help avoid future challenge by the employee and it is advisable to draft a form of words at the time of categorisation, and share this with the employee, rather than waiting until a reference request is received in the future.

11. Referral to the DBS and Regulatory Bodies

Disclosure and Barring Service

- 11.1 The school has a legal duty to make a referral to the DBS where the following two conditions are met:

Condition 1

- the school withdraws permission for a person to engage in regulated activity with children or they are moved to another area of work that isn't regulated activity
- the school would have taken the above action, but the person was re-deployed, resigned, retired, or left before a case was concluded

Condition 2 - The individual in regulated activity has:

- 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 a risk of harm to a child still exists)

- 11.2 Where the above conditions are met the school has a legal obligation to make a referral to the DBS. This duty to refer applies irrespective of whether another body has made a referral to the DBS in relation to the same person.
- 11.3 A referral to the DBS can be made in the interests of safeguarding children even if the legal conditions are not met. This could include acting on advice of the police or a safeguarding professional, or in situations where there is insufficient evidence to dismiss or remove a person from working with children. The DBS are required by law to consider any and all information sent to it from any source.
- 11.4 The school should consider the relevant employment and data protection implications of taking such action and are strongly advised to take legal/professional advice in relation to these cases.

Regulatory bodies

- 11.5 If the employee is a member of a regulatory or professional body the school must consider making a referral if the relevant thresholds are met.

Teaching Regulation Agency

- 11.6 The school has a statutory duty to consider referral of cases involving serious professional misconduct to the Teaching Regulation Agency (TRA). This will usually be considered where a teacher has been dismissed, or would have been dismissed had they not resigned first.
- 11.7 The TRA defines safeguarding as being when an allegation against a teacher is in any way connected to the risk of harm, or actual harm to a child. In such cases they advise referral to the Disclosure and Barring Service. However, if a safeguarding issue also involves misconduct by a teacher, a referral should be made to both the DBS and TRA. TRA and the DBS will consider the misconduct and safeguarding aspects of the case respectively and in parallel.
- 11.8 When considering whether to bar a teacher, the criteria used by the DBS differ from those used by the TRA. Where the DBS has decided a case does not meet its criteria for barring, the TRA can still decide to refer the case to a professional conduct panel for its consideration.
- 11.9 Cases should usually be referred to the TRA when they have been concluded, however, in cases where there has been a particularly serious allegation and there is a risk that the individual may be teaching elsewhere, the school may apply for an interim prohibition order. The Secretary of State has the power to impose an interim prohibition order if he/she considers that it is necessary in the public interest to do so.

12. Allegations against people who are not employees

- 12.1 There are often situations where people work within the school but are not directly employed e.g. agency supply staff, consultants, employees of other

agencies such as the NHS, etc. Additionally, issues may be raised against employees who have left the employment of the school and now work elsewhere (please see paragraph 4.7 regarding historic allegations). If an allegation is made against any such individual, then the NYSCP procedures will apply and the issue should be reported to the LADO in the same way.

- 12.2 The school's internal procedures (e.g. disciplinary) do not apply to these individuals but the school may need to be involved in some investigation, for example, if an incident happened whilst the individual was working at the school.
- 12.3 The school will also need to determine whether to continue to use that individual's services, both whilst the allegation is being investigated and considered and on a longer-term basis. Notification of the allegation to the individual's employer should only take place following discussion with the LADO. Where the school has decided to stop using the services of the individual it must consider whether the criteria have been met for a referral to any regulatory agencies or the DBS.

Volunteers

- 12.4 As stated in paragraph 2.1 above, the NYSCP procedures apply to volunteers working within the school, including members of the Governing Body. The school's internal procedures (e.g. disciplinary) also do not apply where an allegation is made against a volunteer. However, the school must ensure that the necessary investigations and considerations are undertaken to:
- enable the allegation to be categorised
 - allow a determination to be made regarding whether the criteria have been met for referral to the DBS
 - allow for the provision of accurate employment references to be provided if relevant

13. Resignations and Settlement Agreements

- 13.1 In all cases covered by the NYSCP procedures, the school must make every effort to reach a conclusion even if:
- the individual refuses to co-operate, having been given a full opportunity to answer the allegation;
 - it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete.
- 13.2 The fact that a person tenders his or her resignation or ceases to provide their services must not prevent an allegation from being followed up in accordance with the NYSCP procedures. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if an employee's period of notice expires before the process is complete, but the school must make every effort to reach and record a conclusion wherever possible.

- 13.3 It is unlawful for the school to enter into any settlement agreement which restricts its ability to:
- refer relevant cases to the DBS or a regulatory body; or
 - provide an employment reference which includes details regarding the allegation and actions taken (see section 10 above).

14. Whistle-Blowing / Confidential Reporting Policy

- 14.1 Schools should have a Whistle-Blowing Policy and employees can voice concerns actions or attitude of colleagues under this. If a member of staff believes that a reported allegation or concern is not being dealt with appropriately by the school, they should report the matter to the LADO.

15. Confidentiality

- 15.1 Every effort must be made to maintain confidentiality and guard against publicity whilst an allegation is being investigated or considered. Information should be restricted to those who have a need to know in order to protect children, facilitate enquiries and manage internal processes. Employees who are the subject of allegations should also be required to maintain confidentiality regarding the process and individuals involved.