

**SUPPLEMENTARY GUIDANCE**

**FOR**

**SCHOOLS AND EDUCATION SETTINGS**

**ON**

**MANAGING ALLEGATIONS OF ABUSE**

**AGAINST MEMBERS OF STAFF**

**AND**

**MANAGING CONCERNS THAT DO NOT**

**MEET THE HARM THRESHOLD**

These Procedures should be read in conjunction with:

Tower Hamlets SCP Multi-Agency Safeguarding Thresholds Guidance - see Tower Hamlets SCP Website:

<http://www.childrenandfamiliestrust.co.uk/the-lscb/>

Tower Hamlets SCP LADO Procedures and Flowchart re Allegations made against staff working in the children's workforce - Information about reporting and managing allegations - see Tower Hamlets SCP Website:

<http://www.childrenandfamiliestrust.co.uk/the-lscb/>

Tower Hamlets SCP Supplementary Guidance for Schools/settings and Education Settings on Child Protection Procedures - September 2023 – see Tower Hamlets SCP Website:

<http://www.childrenandfamiliestrust.co.uk/the-lscb/>

and

The London Safeguarding Children Partnership Core Procedures –:

[https://www.londonsafeguardingchildrenprocedures.co.uk/alleg\\_staff.html](https://www.londonsafeguardingchildrenprocedures.co.uk/alleg_staff.html)

# **PART 1 MANAGING ALLEGATIONS OF ABUSE AGAINST MEMBERS OF STAFF**

## **INTRODUCTION**

The following Supplementary Guidance should be followed by all schools and education settings as well as services that have professionals working in schools/settings to support their management of allegations and concerns that do not meet the harm threshold.

In accordance with Sections 157 and 175 of the Education Act 2002, and the related statutory guidance, “Keeping children safe in education: Statutory guidance for schools and colleges – 1 September 2023” (DfE, Sept 2023), all schools and education settings (including maintained schools, nurseries, pupil referral units, independent schools, academies, further education institutions, 16-19 academies and independent training providers), and Local Authorities exercising education functions, need to have procedures in place to ensure that any allegation of abuse made against a teacher or other member of staff (including contractors and agency staff) or volunteer in an education setting is 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.

Sections 10 and 11 of the Children Act 2004 and the statutory guidance “Working Together to Safeguard Children 2018” (HM Govt, July 2018, Updated July 2022) extend these requirements to other local authority centres/settings/services and to partner agencies.

“Working together to Safeguard Children 2018” specifies that all local Safeguarding Children Partnerships (SCPs) have a statutory role and function in developing local procedures for safeguarding children including handling allegations against professionals and other carers (including volunteers) of a child protection nature that comply with the requirements detailed.

Part three of “Keeping children safe in education: Statutory guidance for schools/settings and colleges – 1 September 2023” (DfE, Sept 2023) details requirements related to Safer Recruitment. Governing bodies, trustees, management committees and proprietors are required to prevent people who pose a risk of harm from working with children by adhering to statutory responsibilities in relation to Safer Recruitment.

Part four section one of “Keeping children safe in education: Statutory guidance for schools/settings and colleges – 1 September 2023” (DfE, Sept 2023) focusses on how allegations of abuse made against teachers and other staff should be managed. Part four section two provides statutory advice on the management of concerns that do not meet the harm threshold.

The Tower Hamlets Safeguarding Children Partnership has formally adopted the revised 7<sup>th</sup> edition of the London Safeguarding Children Procedures

issued by the London Safeguarding Children Partnership (Updated March 2023). The Tower Hamlets SCP supplementary guidance for handling allegations against teachers and other staff and professionals working in schools and education settings should be viewed as supplementary to Chapter 7 of the London Safeguarding Children Procedures: “Allegations against Staff or Volunteers (People in Positions of Trust), who Work with Children,” and Partnership Arrangements 2: “Safe Recruitment & Selection, and the Management of Adults who Work with Children.”

It is recognised that good liaison, effective communication, and working relationships, which provide a basis of trust and understanding between professionals working in education settings, the Police, and Children’s Social Care, are essential features of effective procedures for dealing with allegations.

When an allegation is made, staff members have a duty to respond professionally by following these procedures. It is imperative that everyone who is involved with receiving the report of an allegation maintains an open and enquiring mind.

Whilst the welfare of the child, and of other children, must remain paramount throughout, all parties involved in the allegation, including the child and their family, should be reassured that the matter will be dealt with in a careful, measured way in accordance with the procedures. Every effort will be made to balance the welfare of the child and the interests of the member of staff who is the subject of the allegation.

## **NAMED SENIOR OFFICER**

The Named Senior Local Authority Officer (**Lisa Fraser**, Director of Education) has overall responsibility for ensuring that schools and education settings across Tower Hamlets follow procedures when managing allegations in accordance with “Working Together to Safeguard Children 2018 (Updated July 2022)” and “Keeping Children Safe in Education – 1 September 2023”, resolving any inter-agency issues and liaising with the Tower Hamlets SCP on the subject. (**David Cregan**, Executive Headteacher of the Corporate School for Children Vulnerable, deputises as the Named Senior Officer in Lisa Fraser’s absence). This guidance document outlines these procedures.

## **DISQUALIFICATION UNDER THE CHILDCARE ACT 2006**

Part three of “Keeping children safe in education: Statutory guidance for schools and colleges – 1 September 2023” (DfE, Sept 2023) details requirements related to Safer Recruitment. These include the requirements given in the statutory guidance, “Disqualification under the Childcare Act 2006: Statutory guidance for local authorities, maintained schools, independent schools, academies and free schools – 31 August 2018” (DfE, August 2018).

Schools/settings which work with and provide any form of childcare for children up to the age of 8 years are required to undertake specific checks to ensure that they do not employ someone who is disqualified from working with such age groups under the Childcare Act 2006 and the associated Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (“the 2018 Regulations”), unless the individual has successfully been granted a waiver by Ofsted.

Schools/settings must ensure that they do not apply the 2018 Regulations checks to individuals who do not fall under the scope of the legislation and regulations. It is good practice for schools/settings to record the Childcare Disqualification checks on the Single Central Record of safer recruitment checks.

Under the 2018 Regulations, it is specified that Regulation 9 relating to disqualification by association only applies where childcare is provided in domestic settings or under a domestic premises registration. Accordingly, under the 2018 Regulations and the related statutory guidance, **schools are no longer required to establish whether a member of staff providing, or employed to work in, childcare is disqualified by association.**

The Disqualification under the Childcare Act 2006 statutory guidance advises schools/settings to ensure that their safer recruitment procedures and safeguarding policies are clear about the expectations they place on staff, including where their relationships and associations both within and outside of the workplace (including online) may have implications for the safeguarding of children. The risks associated with the wider family and close associates of the member of staff may need to be considered even if their work with children does not fall within the remit of the statutory guidance.

Schools/settings should take the opportunity, for example through performance management and other staff discussions, to create the right culture and environment, so that staff feel comfortable, where it is appropriate, to discuss matters outside of work, which may have implications for the safeguarding of children in the workplace. These discussions can help schools/settings safeguard their employees’ welfare and contribute to their duty of care towards their staff. Where appropriate, it will help schools/settings identify whether arrangements are needed to support these members of staff. Such discussions can also help schools/settings manage children’s safety, providing them with information that will help them consider whether there are measures that need to be put in place to safeguard children e.g. by putting arrangements in place to stop or restrict a person coming into the school/setting where a potential risk to children has been identified.

Schools/settings should consider providing training to governors and staff with management responsibilities in this important area.

## **ALLEGATIONS OF A SAFEGUARDING AND CHILD PROTECTION NATURE**

An allegation indicates a person has harmed a child or has behaved in such a way that they may pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity. This guidance should be used in respect of managing all cases in which it is alleged that a member of staff (including volunteers, contractors and agency staff) has:

- behaved in a way that has harmed a child, or may have harmed a child; or
- 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 would pose a risk of harm if they work regularly or closely with children; or
- behaved or may have behaved in a way that indicates they may not be suitable to work with children.

An allegation may arise from a number of sources, for example, a report from a child, a concern raised by an adult in the school, or a complaint made by a parent. It should be noted that the allegations may relate to the personal or professional life of the member of staff or volunteer. There is presently a heightened concern about cases involving adults working with children having inappropriate relationships with children and cases involving adults accessing/creating/sharing inappropriate images of and information about children, using ICT, the internet and social media.

It needs to be recognised that the definition of an allegation now includes behaviour that has occurred outside of their role in the school/setting, which calls into question the suitability of a member of staff to be working with children. Where it has been reported that a member of staff has behaved in a way outside of the role in the school that indicates they may not be suitable to work with children, then an assessment needs to be done of the transferrable risk to children at the school/setting in consultation with the Local Authority Designated Officer (LADO).

It is in the interests of all parties that allegations are taken seriously and thoroughly considered but also that this is undertaken in a timely manner and delay avoided.

## REPORTING ALLEGATIONS

When it is alleged that a member of staff has physically, sexually, or emotionally harmed a child, then this should be reported immediately to the Headteacher/Manager. Where the allegation or concern relates to the Headteacher/Manager then this should be reported immediately to the Chair of Governors or equivalent. In independent schools/settings where the Headteacher against whom the allegation is made is also the Proprietor of the setting, the allegation should be reported directly to the LADO. It is likely that information will also need to be shared with the Designated Safeguarding Lead, given that a child is alleged to have been harmed, so that support for the child is put in place and contact is made with the relevant statutory agencies.

When the allegation concerns a member of staff, the Headteacher/Manager assumes the role of case manager and before contacting the LADO should try to establish the practical details about the time, dates(s) and location of the alleged abuse and the names of potential witnesses, in addition to whether there was any CCTV in the relevant location. **On no account should the Headteacher/Manager seek to interview either the child or children, or the person(s) against whom the allegation has been made, before contacting the LADO.** The case manager must be careful not to jeopardise future police investigations. The school must keep a written record, which should be signed and dated by the Headteacher/Manager.

If the allegation concerns the Headteacher then the same practical information should be gathered by the Chair of the Governing Body or equivalent, who assumes the role of case manager. On no account should any attempt be made to interview either the child or children, or the Headteacher.

It needs to be emphasised that initial inquiries about the practical details relating to the allegation should not constitute an investigation and should not in any way try to establish guilt or innocence.

**After only trying to establish the basic, practical details about the allegation, the case manager must contact the Local Authority Designated Officer to report and discuss the allegation.** The London Safeguarding Children Procedures (March 2023) specify that the LADO should be informed **within 1 working day** of the allegation being made. The LADO will then facilitate a referral to the Multi-Agency Safeguarding Hub (MASH) as deemed necessary. In the event that it is not possible to speak to the LADO then the case manager should contact Geraldine O'Donnell, the Head of Safeguarding and Quality Assurance, who line manages the LADO: Email: [Geraldine.O'Donnell@towerhamlets.gov.uk](mailto:Geraldine.O'Donnell@towerhamlets.gov.uk) Tel: 020 7364 6030.

Where the case manager has a concern about other children in the community or the safety of the member of staff's family, these concerns should be discussed with the Designated Safeguarding Lead and a risk assessment carried out. It may also be necessary to make a referral to Children's Social Care for the children concerned.

Although agency staff are not directly employed by the school, the statutory guidance, Keeping Children Safe in Education (DfE, September 2023), makes clear that the responsibility still lies with the school/setting in ensuring that allegations involving agency staff are managed properly and that the school's procedures should still be followed. The school will normally take the lead as the case manager since they have direct contact with the children concerned. As with allegations against members of staff or volunteers, the Headteacher/Manager must contact the Local Authority Designated Officer in the first instance. The agency must cooperate fully with any inquiries carried out by the Local Authority Designated Officer, Police or Children's Social Care, and be fully involved in the process as the employer. It is good practice for schools/settings to inform supply agencies of their Managing Allegations policy and procedures including when updates are made.

Where an allegation is made against a governor or trustee, the school should consult with the LADO in the first instance and follow the same procedures. Where the allegation is substantiated at the conclusion of the case, the school should follow the procedures to consider removing the individual from office.

## **THE ROLE OF THE LOCAL AUTHORITY DESIGNATED OFFICER FOR ALLEGATIONS (LADO)**

The Local Authority Designated Officer (LADO) for Allegations provides advice and guidance in relation to allegations involving professionals and other carers working with children. The LADO coordinates the progress of such cases and is responsible for liaising with the other agencies.

Schools/settings should always contact the LADO in the first instance to discuss any allegation or concern relating to a member of staff. The LADO will inform the school/setting when to involve their HR Provider.

If the allegation is such that it is clear an investigation by the Police and Children's Social Care is not necessary or a strategy meeting decides so, the LADO will discuss with the school/setting what action should be taken. It may be decided to take no action, issue an informal warning and/or professional advice to the member of staff, or institute an investigation under disciplinary procedures.

Where the initial discussion leads to no further action, the case manager and the LADO should record the decision and justification for it and agree on what information should be put in writing to the individual concerned and by whom.

In any case where the allegation warrants investigation, the LADO will also discuss with the representative of the school whether the member of staff needs to be suspended. In addition, there will be discussion about what the person can be told about the allegation, taking account of any views expressed by the Police and Children's Social Care in the strategy discussion.

Where there is particular concern about the progress of cases involving allegations against members of staff, the case manager should contact the LADO in the first instance. Should the concern continue then there is the facility to contact the LA Named Senior Officer.

The LADO will maintain a confidential record of the progress and outcomes of each allegation in accordance with DfE requirements on the LA Children's Social Care Management Information System for monitoring and reporting purposes.

## **INITIAL DISCUSSION**

The LADO will liaise with the school/setting's case manager, the Team/Duty Manager in the MASH in Children's Social Care and the Police Child Abuse Investigation Team (CAIT) to discuss whether the concern should be considered under child protection procedures and if so, what immediate action is required. The LADO will also in conjunction with the case manager consider whether the member of staff should be suspended by the school whilst the procedures are being followed.

During the initial discussion, consideration will need to be given to how, and by whom, the parents/carers of a child who has allegedly been abused should be informed if they are not already aware of the allegation. In some circumstances it will be for the school/setting to advise parents/carers of an incident involving their child. For example, if the child has had to be physically restrained, or has been injured in an incident at the school. In other circumstances Children's Social Care and/or the Police may need to inform parents/carers. Where the allegation involves physical contact with a child including use of physical restraint, the initial discussion should take into account that teachers and other school staff have the legal power to use reasonable force in certain exceptional circumstances but only as a last resort.

The accused member of staff should normally be told about the allegation as soon as possible. However, where it is clear that Police and Children's Social Care may need to be involved, this should not be done until those agencies have had a discussion with the LADO and it is agreed what information can be disclosed to the person.

Where the allegation is clearly and demonstrably false, consideration will need to be given to the management of the false allegation by the school/setting, and where appropriate the LA. In those cases where the allegation represents inappropriate behaviour or poor practice by a member of staff, further consideration will be given to whether it is a matter that can properly be dealt with by the school/setting under disciplinary procedures.

Where it is evident that the child has suffered, or is suffering, or is likely to suffer significant harm or where the child has alleged that a criminal offence has been committed, then a multi-agency Allegation against Staff and

Volunteers (ASV) meeting will be convened by the LADO as soon as is practicably possible and this will normally be within 5 working days of receipt of the referral.

## **MULTI-AGENCY ALLEGATION AGAINST STAFF AND VOLUNTEERS (ASV) MEETING**

Where an ASV meeting is convened, it should include a representative of the school/setting unless there are good reasons not to do that. It should take account of any information the school/setting can provide about the circumstances or context of the allegation and consider whether other children might be at risk. If the allegation involves physical contact with a child including use of physical restraint, the strategy discussion should take into account that school staff have the legal power to use reasonable force in certain circumstances but only as a last resort.

The strategy meeting will conclude whether:

- A joint investigation will be undertaken by Children's Social Care and the Police under Section 47 of the Children Act 1989.
- The Police will commence investigation into a possible criminal offence.
- The matter should be dealt with under the school's disciplinary procedures.
- There is to be no further action.

Where the discussion concludes that there should be an investigation by the Police and Children's Social Care, the representatives present will consider whether the accused member of staff needs to be suspended or should remain suspended if this is already the case.

In considering whether suspension of the member of staff is appropriate the following criteria will be considered:

- Whether the child is at risk
- Whether the allegations are so serious that dismissal for gross misconduct is possible
- Whether the conduct of the investigation can proceed unimpeded by the continuing presence of the member of staff

Any Police interviews will be arranged to take place away from the school and to take place at reasonable times.

There will also need to be consideration of whether there are any constraints or limitations on the information that the member of staff can be given about the allegations.

The case manager should monitor the progress of cases to ensure they are dealt with as quickly as possible in a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals, and wherever possible the first review should take place 4 weeks after the initial assessment.

## **SUSPENSION OF THE MEMBER OF STAFF**

In many cases an investigation can be resolved quickly and without the need for suspension.

If the LADO, Police and Children's Social Care have no objections to the member of staff continuing to work during the investigation, then based on an assessment of risk the following alternatives should be considered before suspending a member of staff:

- redeployment within the school 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 the individual to alternative work in the school so the individual does not have unsupervised access to children.
- moving the child or children to classes 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 in a different location, for example to an alternative school or college or work for the local authority or academy trust.

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

If suspension is to take place the Headteacher/Manager should be advised and supported in this action by their HR Provider. The member of staff concerned will be advised to seek the advice of their trade union or professional organisation before commencing an interview with the Headteacher/Manager. If immediate suspension is considered necessary, the case manager should record the rationale and justification for it, including what alternatives to suspension were considered and why they were rejected.

It should be noted that the LA cannot require a school/setting to suspend a member of staff, it can only advise them to do so. The power to suspend is vested in the Headteacher and the Governing Body or equivalent. The Headteacher of a school can suspend any other member of staff, and the Governing Body can suspend the Headteacher. The Chair can act for the Governing Body of a school when an urgent decision about suspending the Headteacher is needed.

When the member of staff has been suspended by a Headteacher/Manager, then the Chair of the Governing Body or equivalent and the Director of Children's Services (DCS) must be informed formally in writing by the Headteacher/Manager. If the suspension is of the Headteacher, then the Director of Children's Services must similarly be informed in writing by the Chair of Governors or equivalent.

If the member of staff is employed by the school/setting through an agency, the Director of the Agency must also be informed in writing by the Headteacher/Manager of the concerns and of the decision to cease the employment of the member of staff at the school. It should be discussed with the agency where the supply teacher is working across a number of schools/settings, whether it is appropriate to suspend the supply teacher, or redeploy them to another part of the school/setting, whilst they carry out their investigation.

## **DEFINITIONS OF THE OUTCOMES OF ALLEGATIONS AFTER INVESTIGATIONS**

In "Keeping children safe in education: Statutory guidance for schools/settings and colleges – 1 September 2023" (DfE, Sept 2023) it is advised that the following definitions should be used when determining the outcome of allegation investigations:

- a. **Substantiated:** there is sufficient evidence to prove the allegation.
- b. **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive.
- c. **False:** there is sufficient evidence to disprove the allegation.
- d. **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- e. **Unfounded:** to reflect cases where 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 incident or was mistaken about what they saw. Alternatively, they may not have been aware of all the circumstances.

## **REFERRAL TO DISCIPLINARY PROCEDURES**

The decision to refer to disciplinary procedures may be taken:

- when the allegation has not proceeded to a referral under child protection procedures.
- the decision is reached at the multi-agency ASV meeting.
- at a time when enquiries by the Police and/or Children's Social Care lead to a decision not to pursue the allegation under Section 47 of the Children Act 1989, or
- if the Police or Crown Prosecution Service decide not to pursue the allegation down the criminal/prosecution route.

If an enquiry under child protection procedures continues, or if the Police continue to pursue a criminal investigation, the disciplinary process must be held in abeyance, unless advised otherwise.

If a disciplinary process is to take place, it must be made clear to all those involved in the investigation that this has a different objective from a child protection enquiry. It should also be remembered that the evidential threshold in the disciplinary process is the balance of probabilities test, which is lower and different than the 'beyond reasonable doubt' standard used in the criminal justice system.

Due to a lack of resource or due to the nature and complexity of the allegation, schools/settings may require an independent investigator. Schools/settings should make contact with the Local Authority if an independent investigator is required. If at any stage during the disciplinary investigation new evidence emerges which would suggest the matter should be referred again to the LADO and Children's Social Care, the investigation should be halted. It will only be resumed if a further multi-agency ASV meeting is satisfied that its resumption will not interfere with enquiries.

The Headteacher/Manager/Chair will be supported through the disciplinary process by their HR Provider. They should monitor the progress of the disciplinary procedures ensuring that all essential parties (e.g. the LADO) are kept informed of the current status. They should ensure that the member of staff against whom the allegation has been made is offered counselling during the process.

## **CASES IN WHICH THE ALLEGED PERPETRATOR RESIGNS AND/OR REFUSES TO COOPERATE WITH THE PROCESS**

Part four of “Keeping children safe in education: Statutory guidance for schools and colleges – 1 September 2023” (DfE, Sept 2023) specifies that **if the accused person resigns, or ceases to provide their services, this should not prevent an allegation being followed up in accordance with this guidance.**

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 accused 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 substantiated on the basis of all the information available, should continue even if that cannot be done or the accused does not cooperate. It may be difficult to reach a conclusion in those 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.

## **ACTIONS ON CONCLUSION OF A CASE**

Details of allegations that are found to have been malicious or false should be removed from personnel records unless the individual gives their consent for retention of the information. However, for all other allegation outcomes, i.e. substantiated, unfounded and unsubstantiated it is important that the following information is kept on the file of the person accused:

- 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 decisions reached and the outcome as categorised above.
- a copy provided to the person concerned, where agreed by children’s social care or the police.
- a declaration on whether the information will be referred to in any future reference.

All records should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

Where an allegation is found to be false, unfounded, unsubstantiated or malicious the information should not be included in employer references. Substantiated allegations should only be included in references, provided that the information is factual and does not include opinions.

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 their services, the LADO will discuss with the Headteacher/Manager/Chair and their HR Provider whether to refer the case to (i) the Disclosure and Barring Service (DBS) for consideration of inclusion on the barred lists, and (ii) the appropriate regulatory agency - for example, for teachers the Teaching Regulation Agency (TRA).

There is a **legal requirement** for employers to make a referral to the DBS where the individual is convicted of a relevant offence, an individual has engaged in relevant conduct (including inappropriate sexual conduct) that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child.

In such circumstances, the duty to refer an individual to the DBS arises where an employer has removed the individual from relevant work with children (regulated activity) or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. **This is a legal duty and failure to refer when the criteria are met is a criminal offence.** Schools/settings should follow the [relevant DBS referral guidance](#) available on gov.uk.

The statutory guidance, "Keeping Children Safe in Education – 1 September 2023" states that if the accused person resigns or their services cease to be used and the criteria are met, it will not be appropriate to reach a settlement/compromise agreement. A settlement/compromise agreement which prevents the school from making a DBS referral when the criteria are met would likely result in a criminal offence being committed, as the school would not be complying with its legal duty to make the referral.

The DBS will consider whether to bar the person from working in regulated activity, which will include most work in schools and other educational establishments. 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 have to 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.

Professional misconduct cases have to be referred to the relevant regulatory body and schools/settings are advised to follow the relevant referral guidance such as that provided by the [Teaching Regulation Agency](#)

## **ALLEGATIONS THAT ARE FALSE OR WITHOUT FOUNDATION**

Where it is decided that an allegation is demonstrably false or without foundation, a written report should be made giving the reasons for the conclusion.

This will normally be undertaken by the case manager. However, if a multi-agency ASV meeting had been necessary then it will be detailed in the minutes of the meeting.

In such cases consideration should be given to the possibility that the child who made the allegation may be experiencing abuse elsewhere which requires further enquiries, and the designated safeguarding lead will need to follow up and ensure the child is fully supported.

The case manager will inform the member of staff orally and in writing that no further action is to be taken under disciplinary or child protection procedures.

They will also inform the parents/carers of the outcome of the consideration of the allegation.

The Headteacher/Manager/Chair of the Governing Body in conjunction with their HR Provider will consider whether to offer counselling and/or informal professional advice to the member of staff as appropriate.

## **CONFIDENTIALITY**

When an allegation is made, the school/setting must make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered.

Provisions under Sections 141F, 141G and 141H of the Education Act 2002 (as amended by Section 13 of the Education Act 2011) effective from 1st October 2012 seek to protect the anonymity of staff who are the subject of allegations through the introduction of 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 (where that identification would identify the teacher as the subject of the allegation).

The reporting restrictions apply until the point that the accused person is charged with an offence, or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation. The reporting restrictions also cease to apply if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a judge lifts restrictions in

response to a request to do so.

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

The Police will 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 would like to depart from that rule, e.g. an appeal to trace a suspect, they must apply to a magistrates’ court to request that reporting restrictions be lifted).

The case manager should take advice from the LADO, Police and Children’s Social Care 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 speculation; and
- how to manage press interest if and when it should arise.

## **INFORMATION FOR PARENTS/CARERS**

Parents or carers of a child or children involved should be told about the allegation as soon as possible. However, where a strategy discussion is required, or police or children’s social care services need to be involved, the case manager should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents or carers. Parent or carers should also be kept informed about the progress of the case and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process. The deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but the parents or carers of the child should be told the outcome in confidence.

Parents and carers should also be made aware of the prohibition on reporting or publishing allegations about teachers in section 141F of the Education Act

2002 (see below). If parents or carers wish to apply to the court to have reporting restrictions removed, they should be told to seek legal advice.

## **SUPPORT FOR THE MEMBER OF STAFF WHO IS THE SUBJECT OF AN ALLEGATION**

It is recognised that being the subject of an allegation can be a difficult emotional experience for a member of staff. Employers have a duty of care for their employees and support should be provided throughout the process of the investigation and beyond.

A member of the senior management team should be appointed as the key link person for the member of staff. The staff member should also be encouraged to seek additional guidance from their professional association or trade union. The individual needs of the member of staff should also be reviewed at the end of the case.

A member of staff who has been the subject of a false or unsubstantiated allegation should be offered both professional and emotional support. This will assist them in re-establishing their professional confidence and self-esteem and, where suspension has been applied, to help them to re-integrate into the workplace community.

In those cases where the investigation has shown the allegation to be an issue of the conduct or competency of the member of staff, this should be followed up under disciplinary procedures and, counselling and training should be offered. Appropriate support will also need to be provided to enable the member of staff to continue their career.

## **LEARNING LESSONS**

At the conclusion of a case in which an allegation *is* substantiated, the LADO should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the school/setting's procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension, and whether or not suspension was justified. Lessons should also be learned from the use of suspension when the individual is subsequently reinstated. The LADO and case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

For all other cases, where the allegation concluded to be either unfounded, false, malicious or unsubstantiated the case manager (and if they have been involved the LADO) should review the facts and determine whether any lessons can be learned and if improvements can be made.

Should any new information subsequently emerge after the conclusion of the case that is relevant to it and the outcome, then the LADO should be contacted without delay.

### **SEEKING ADVICE IN RELATION TO AN ALLEGATION AGAINST A MEMBER OF STAFF OR PROFESSIONAL WORKING IN THE SCHOOL**

Where seeking advice in relation to a possible allegation against a member of staff or professional working in the school/setting or where there is particular concern about the progress of a case, the Headteacher/Manager/Chair should contact:

- **Tower Hamlets Local Authority Designated Officer (LADO) – Melanie Benzie**

Tel: 020 7364 0677

Email: [LADO@towerhamlets.gov.uk](mailto:LADO@towerhamlets.gov.uk)

Should the LADO not be available then the following can be contacted:

- **Tower Hamlets Head of Safeguarding and Quality Assurance- Geraldine O'Donnell**

Tel: 020 7364 6030

Email: [Geraldine.O'Donnell@towerhamlets.gov.uk](mailto:Geraldine.O'Donnell@towerhamlets.gov.uk)

For advice in relation to Safer Recruitment, Disqualification under the Childcare Act 2006 and the implementation of disciplinary procedures against staff members in relation to concerns of a child protection nature contact the school/setting's HR Provider.

### **SAFEGUARDING ADVICE AND TRAINING FOR SCHOOLS AND SETTINGS**

For further information, queries and requests related to bespoke Safeguarding or Safer Recruitment training contact:

Tower Hamlets Education Safeguarding Service:  
Tel: 020 7364 3431 or  
Email: [THESS@towerhamlets.gov.uk](mailto:THESS@towerhamlets.gov.uk)

## PART TWO: MANAGING CONCERNS THAT DO NOT MEET THE HARM THRESHOLD

### INTRODUCTION

Safeguarding and promoting the welfare of children is everyone's responsibility. A highly vigilant safeguarding culture involves all staff being alert to the signs and symptoms of abuse among children who attend the setting and immediately making a report to the Designated Safeguarding Lead, but it also involves all staff identifying and reporting concerns in regard to the conduct and behaviour of colleagues towards children in their care, or behaviours both within and outside the setting that may have implications for the safeguarding of children and call into question the suitability of the individual to be working with children. All staff are also encouraged to self-report when their conduct falls short of the expectations set out in the school/setting's Staff Code of Conduct and other supplementary guidance.

As part of the whole school approach to safeguarding, there needs to be an open and transparent culture in which **all concerns** about all adults working in or on behalf of the school (including supply teachers, volunteers and contractors) are dealt with promptly and appropriately. There will be concerns that meet the harm criteria for which the school's Management of Allegations procedures must be applied along with Part 1 of the current guidance. However, there may be concerns about the conduct of staff that do not meet the criteria of an allegation as set out in Part 1, which are referred to in Keeping Children Safe in Education 2023 Part Four Section Two as **concerns or allegations that do not meet the harm threshold**. These can also be referred to as low-level concerns not because they are insignificant but because they do not meet the harm threshold.

Concerns that do not meet the harm threshold include any behaviour that is inconsistent with the values, expectations and standards of the school/setting as set out in the Staff Code of Conduct and for those in a teaching role this also includes the expectations set out in the Teacher's Standards. It involves the identification of early behaviour that is concerning, problematic or inappropriate. It also can include conduct outside of work that causes unease about the suitability of individuals to work with children.

All concerns no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' should be reported when an adult working in or on behalf of the school may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work and;
- does not meet the allegations threshold or is otherwise not considered serious enough to consider a referral to the LADO

Examples of such behaviour could include, but are not limited to:

- being over friendly with children
- having favourites
- taking photographs of children on their mobile phone
- engaging with a child on a one-to-one basis in a secluded area or behind a closed door
- using inappropriate sexualised, intimidating or offensive language

Such behaviour can exist on a wide spectrum, from the inadvertent or thoughtless, or behaviour that may look to be inappropriate, but might not be in specific circumstances, through to that which is ultimately intended to enable abuse.

Keeping Children Safe in Education 2023 Part Four Section Two (DfE, September 2023) requires schools/settings to formalise the identification, reporting and recording of concerns that do not meet the harm threshold as part of their safeguarding regime, in order to help foster an open and transparent culture, where staff are empowered to identify and share concerning, problematic or inappropriate behaviour at the earliest opportunity. Such a safeguarding culture will serve to minimise the risk of abuse within the setting and ensure that adults working in or on behalf of the school are clear about professional boundaries in the first place and act a) within these boundaries and b) in accordance with the ethos and values of the setting.

## **UNDERSTANDING THE CONTEXT**

Research identifies 3 types of offenders of child sexual abuse in organisational settings: Preferential, Opportunistic, and Situational. Preferential offenders are those who have a conscious desire to sexually abuse children, and who either do not see, or are not easily deterred, by obstacles. Opportunistic offenders are those who abuse because potential victims are available and known to be vulnerable and the organisational setting either inadvertently facilitates, or fails to prevent, abusive activity. Situational offenders are those whose desire to abuse is previously unknown or unacknowledged, and their offending is specific to the set of organisational factors which facilitate their offending.

The safest environment for children is a setting where professional boundaries are clearly understood by all staff, strictly adhered to and continuously re-enforced, with leadership role modelling the expected behaviour. Although

initial behaviours that are in breach of the Staff Code of Conduct may occur without bad intentions, research and past Serious Case Reviews have shown that breaches of professional boundaries may form part of the grooming process.

A highly vigilant safeguarding culture, which includes the identification and reporting of all concerns including concerns that appear not to meet the harm threshold, seeks to prevent, deter and stop any type of offender through:

- reducing the opportunity and acceptability of concerning, problematic or inappropriate behaviour
- increasing the effort required to offend
- increasing the risk and perception of the risk of detection
- ensuring there are robust and effective staff support systems in place
- not over-relying on DBS or overseas criminal records checks
- clarity and congruence about values and expectations
- having a Staff Code of Conduct which is understood, accepted and followed by all adults

## **REPORTING CONCERNS THAT DO NOT MEET THE HARM THRESHOLD**

It is crucial that concerns that do not meet the harm threshold are shared responsibly and with the right person and recorded and dealt with appropriately. Ensuring such concerns are dealt with effectively should also protect those working in or on behalf of schools/settings from potential false allegations or misunderstandings.

As with the reporting of allegations, concerns about a member of staff that appear not to meet the harm threshold should be reported to the Headteacher/Manager. Where there is a concern about the Headteacher, the report should be made directly to the Chair of Governors or equivalent.

It is not for the member of staff who is reporting to decide if the concern they identify meets the harm threshold or not. It is the duty of all staff members to report any concern, no matter how small, about the conduct of staff and it is for the Headteacher/Manager/Chair to decide if it meets the harm threshold or not, in consultation with the LADO where appropriate.

Staff should ensure they put all concerns in writing making sure it is signed and dated.

Staff are encouraged and should feel confident to self-refer, where, for example, they have found themselves in a situation which could be misinterpreted, might appear compromising to others, and/or on reflection they believe they have behaved in such a way that they consider falls below the expected professional standards.

Where a low-level concern relates to a person employed by a supply agency or a contractor, that concern should be shared with the Headteacher, recorded in writing, and their employer notified about the concern, so that any potential patterns of inappropriate behaviour can be identified.

It is important that all concerns are shared with the Headteacher as soon as reasonably possible and, in any event, within 24 hours of becoming aware of it (where the concern relates to a particular incident) –however, it is never too late to share a concern.

## **RECORDING OF CONCERNS THAT DO NOT MEET THE HARM THRESHOLD**

All concerns that do not meet the harm threshold will be recorded in writing by the Headteacher/Manager, unless the Headteacher is the subject of the concern, in which case the Chair of Governors or equivalent will make the written record. The written record will include details of the concern, the context in which the concern arose, and action taken. It is up to schools/settings to decide where these concerns should be recorded.

The records will be kept confidential, held securely and comply with the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR). The information about an individual should be kept on file until at least they cease to be employed at the setting.

The name of the individual sharing their concerns will also be noted as part of the record. If the individual wishes to remain anonymous then that should be respected as far as reasonably possible. Anonymity should never be promised to members of staff who share concerns, as it may be necessary to disclose the name of the member of staff making the report, in order to carry out a fair disciplinary investigation. As part of an open and transparent culture staff are encouraged to consent to be named.

Records should be reviewed so that potential patterns of concerning, problematic or inappropriate behaviour can be identified. Where a pattern of such behaviour is identified, the school will decide on a course of action, either through its disciplinary procedures or where a pattern of behaviour

moves from a concern to meeting the harms threshold, in which case it should be referred to the LADO.

If a low-level concern (or group of such concerns) is reclassified as an allegation, all previous records of low-level concerns relating to the same individual will be moved from the central low-level concerns file to the staff member's personnel file

As only substantiated safeguarding allegations are included in references, low-level concerns will not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance. However, where a low-level concern (or group of concerns) has met the threshold for referral to the LADO and found to be substantiated, it will be referred to in a reference.

## **RESPONDING TO CONCERNS THAT DO NOT MEET THE HARM THRESHOLD**

Once the report of a low-level concern has been received, the Headteacher/Manager/Chair should do the following:

- speak to the person who raised the concern
- review the information and determine whether the behaviour is a) consistent with the Staff Code of Conduct b) a low-level concern and therefore inconsistent with the Staff Code of Conduct and ethos and values of the school or c) meets the criteria of an allegation for which the LADO needs to be consulted.
- review other low-level concerns that have been raised about the individual and whether when considered together they amount to an allegation, for which the LADO needs to be contacted.
- If in any doubt about whether the report is a low-level concern or an allegation, the LADO will be immediately contacted for advice and guidance.
- Speak to the individual about whom the low-level concern has been raised unless the LADO or another external agency have advised school not to do this.
- If the low-level concern involves supply staff and contractors the Headteacher/Manager/Chair should notify their employers, so that any potential patterns of inappropriate behaviour can be identified. It is anticipated that a collaborative approach will be taken between school and the employer.

All internal and external discussions that take place in response to the concern will be recorded along with the rationale behind any decision taken and the course of action agreed upon.

If the concern has been raised via a third party, the Headteacher/Manager/Chair should collect as much evidence as possible by speaking:

- directly to the person who raised the concern, unless it has been raised anonymously.
- to the individual involved and any witnesses, unless the LADO or another external agency has advised the school not to do this.

The Headteacher/Manager/Chair should respond in a sensitive and proportionate way – on the one hand maintaining confidence that such concerns when raised will be handled promptly and effectively whilst, on the other hand, protecting staff from any potential false allegations or misunderstandings.

Any investigation of low-level concerns will be done discreetly, and on a need-to-know basis.

Where it is decided that the report of a low-level concern involves behaviour that is consistent with the Staff Code of Conduct, it will still be important for the Headteacher/Manager/Chair to inform the individual in question what was shared about their behaviour, and to give them an opportunity to respond to it. The Headteacher/Manager/Chair should also speak to the person who shared the low-level concern – to provide them with feedback about how and why the behaviour is consistent with the organisation's Code of Conduct. It may be beneficial for the school/review to review the Staff Code of Conduct, for example if it requires further clarity and explanation, and to review the implementation of the Low-Level Concerns Policy.

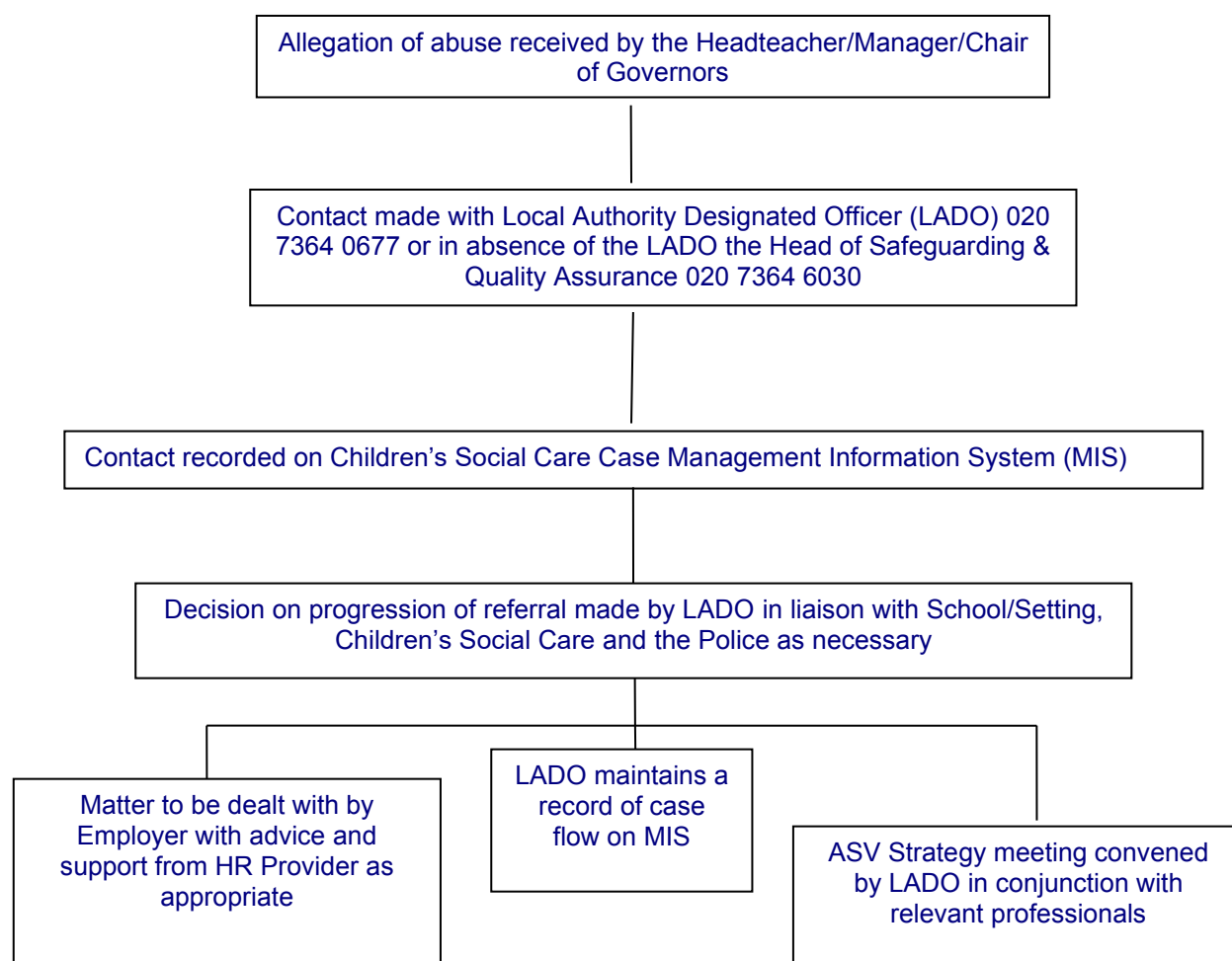
Some low-level concerns will not give rise to any ongoing concern and, accordingly, will not require any further action. Others may be most appropriately dealt with by means of management guidance and/or training.

Any conversation with a member of staff about a low-level concern will include being clear with the individual as to why their behaviour is concerning, problematic or inappropriate, what change is required in their behaviour, and if necessary identifying support they might need in order to achieve and maintain the expected standard of behaviour, and equally being clear about the consequences if they fail to reach the required standard or repeat the behaviour in question. Ongoing and transparent monitoring of the individual's behaviour may be appropriate. An action plan or risk assessment which is agreed with the individual, and regularly reviewed with them, may also be appropriate.

Where the low-level concern in scope raises issues around staff performance and misconduct, the school will take advice from HR and the LADO, where appropriate. The organisation's disciplinary, grievance or whistleblowing procedures should be followed where appropriate.

When responding to reports of low-level concerns consideration should also be given to whether there are wider cultural issues within the school that enabled the behaviour to occur and where appropriate policies could be revised or extra training delivered to minimise the risk of it happening again.

## Overview of Procedure for Managing Allegations against Staff and Volunteers Working with Children in Schools and Education Settings



Agencies/Persons invited to a multi-agency ASV meeting if appropriate can include:

<b>Alleged Perpetrator-Tower Hamlets employees</b>	<b>Alleged Perpetrator-Others</b>
<ul style="list-style-type: none"> <li>• LADO</li> <li>• Education Safeguarding</li> <li>• Police</li> <li>• HR Provider</li> <li>• Service Manager/Employer</li> <li>• School Chair of Governors/Setting Manager</li> <li>• Named Senior Officer (Lisa Fraser)</li> </ul>	<ul style="list-style-type: none"> <li>• LADO</li> <li>• Education Safeguarding</li> <li>• Police</li> <li>• Service Manager/Employer</li> <li>• Chair of Governors/Trustees/Management Committee</li> <li>• HR Provider</li> </ul>