

Managing Allegations Against Staff and Volunteers

April 2015

'We are committed to safeguarding and promoting the welfare of children and young people and expect all staff, volunteers and other third parties to share this commitment.'

The safety of our pupils is our number one priority. Any concerns or signs of abuse or neglect must be immediately reported to the Designated Safeguarding Lead (DSL).

1.0 Policy statement

- 1.1 This policy is published on the academy website.
- 1.2 Focus-Trust takes all concerns and allegations seriously and will always act in the best interests of children and young people; whilst also exercising a duty of care for employees.
- 1.3 Focus-Trust will always work in partnership and share information with local authority children's social care services, the LADO and law enforcement agencies. In any case in which a child may have suffered significant harm or where there are concerns that a child may be at risk of suffering significant harm or where there may be a criminal prosecution, Focus-Trust and the academy will liaise with these agencies to ensure that appropriate steps are taken to safeguard the child or children involved.
- 1.4 Focus-Trust will work to comply with the current DfE statutory regulations; currently Keeping Children Safe in Education 2015 (KCSIE).
- 1.5 Focus-Trust and the academy will make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered.
- 1.6 The Education Act 2011 outlines 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 academy (where that identification would identify the teacher as the subject of the allegation).
- 1.7 These reporting restrictions apply until the point that the accused person is charged with an offence or until the National College for Teaching and Leadership (NCTL) 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 written consent for another to do so or if a judge lifts restrictions in a response to do so.
- 1.8 'Publication' of material 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 or a pupil who, for example, publishes details of the allegation which could lead to the teacher's identification on a social networking site would be in breach of the reporting restrictions.

- 1.9 Throughout the process of managing an investigation, the case manager will take advice from the LADO, police and children's social care services to agree:
- who needs to know and, importantly, exactly what information can be shared;
 - how to manage speculation, leaks and gossip;
 - what, if any information can reasonably be given to the wider community to reduce speculation; and
 - how to manage press interest if and when it should arise.

2.0 Application

- 2.1 This document relates to staff (teaching or non-teaching) or volunteers, proprietors and/or governors who are currently working in a Focus-Trust academy, regardless of whether the current academy is where the alleged abuse took place and the expression 'member of staff' in this policy shall be taken to apply to all of the above. Allegations against a member of staff who is no longer working should be referred to the police.
- 2.2 We aim to deal with any allegation quickly, fairly and in a consistent way – providing effective protection for the child at the same time as supporting the person who is subject to the allegation.
- 2.3 We understand that concerns or allegations may arise in relation to individuals who are not members of staff, as defined above (e.g. in relation to parents, other children, visitors to the academy or third parties unconnected with the academy). In such cases the academy will follow its Safeguarding: Child Protection Policy as its primary policy. However the principles set out in this policy (save those sections which would only apply to members of staff such as paras 6, 8, 11 and 13 and parts of 12, 14 and 15) will still be applied and at all stages discussed with the LADO.
- ## **3.0 Procedure**
- 3.1 This procedure must be used in respect of all cases in which it is alleged or there are concerns that a member of staff has:
- behaved in a way that has harmed a child, or may have harmed a child;
 - possibly committed a criminal offence against or related to a child; or
 - behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they worked regularly or closely with children.
- 3.2 These behaviours include allegations or concerns relating to inappropriate relationships between members of staff and students, for example:
- Having a sexual relationship with a child if in a position of trust in respect of that child, even if consensual (see s16-19 Sexual Offences Act 2003);
 - 'Grooming', i.e. meeting a child under 16 with intent to commit a relevant offence (see s15 Sexual Offences Act 2003);

- Other 'grooming' behaviour rising to concerns of a broader child protection nature (e.g. inappropriate text/email messages or images, gifts, socialising etc);
- Possession of indecent photography/pseudo-photography/moving pictures of children.

4.0 Procedure if an allegation is made or concern is raised

- 4.1 If a member of staff receives an allegation or has a concern about any adult who works with children they must report it immediately to the Principal or Head of Academy. If the allegation or concern involves the Principal or Head of Academy, the staff member should report directly to the Chief Executive of Focus-Trust. It is important however to emphasise that any member of staff, parent or student] can refer their concerns to the LADO directly.
- 4.2 Staff members are reminded not to:
- investigate or ask leading questions;
 - make assumptions or offer alternative explanations for action; or
 - promise confidentiality to the victim – but do offer assurance that information will only be shared on a need to know basis.
- 4.3 On receipt of a report as above the Principal should notify the Chief Executive of Focus-Trust. Where the allegation or concern relates to a member of staff, the Principal shall in these circumstances be the case manager (unless the allegation concerns the Principal in which case the Chief Executive shall be the case manager).
- 4.4 The case manager shall notify the LADO immediately (and in any event within one day of the allegation being made) of all allegations or concerns that come to his/her attention and that appear to meet the criteria.
- 4.5 Some incidents may appear not to meet the criteria in 3.1 above and on the face of it will not warrant consideration of a police investigation, or enquiries by children's social care. However, for the avoidance of any doubt the case manager will refer **all** allegations or concerns or suspicions of abuse to the LADO. Staff must not undertake their own investigations of allegations without prior consultation with the LADO, or in the most serious cases, the police, so as not to jeopardise statutory investigations. Borderline cases will also be discussed with the LADO in the first instance without identifying individuals and, following discussion, the LADO will determine whether the allegation or concern should be formally referred. It is also important to ensure that even expressions of concern that do not necessarily amount to allegations are reported to the LADO and addressed, particularly if there are repeated reports of such concerns and/or questionable conduct. It may be that the concern raised has been raised previously. If there are repeated reports of such concerns and/or questionable conduct, a pattern of unacceptable behaviour may be identified.
- 4.6 If a staff member feels that a reported allegation or concern is not being dealt with appropriately, they should report the matter to the LADO directly.

- 4.7 All allegations or concerns are reported to the LADO. We work with the LADO and keep them informed of allegations or concerns so that they can effectively monitor all cases. They maintain an oversight of the procedures for dealing with such allegations or concerns, for resolving inter-agency issues and for liaison with our Local Children's Safeguarding Board on such matters. We follow their guidance at all times with regard to managing the case.
- 4.8 In the rare case that immediate intervention is required from the police and/or children's social care services, the LADO will be informed immediately where practicable, or as soon as possible following referral to the police or other agency where it is not. Under normal circumstances, the LADO would advise which other services or agencies to contact.
- 4.9 The purpose of an initial discussion is for the LADO and case manager to consider the nature, content and context of the allegation and agree a course of action. The LADO may ask the case manager to provide or obtain relevant additional information, such as previous history, whether the child or their family have made similar allegations previously and the individual's current contact with children.
- 4.10 By sharing information the decision may be taken that no further action is required. In this case, this decision and justification should be recorded in writing by both the case manager and LADO, and an agreement reached on what information should be put in writing to the individual concerned and by whom. The case manager should share any written information with the Head of HR.

Following this type of outcome the case manager should consider with the LADO what action should follow both in respect of the individual and those who made the initial allegation.

- 4.11 If there is cause to suspect that a child is suffering or is likely to suffer significant harm, a strategy discussion should be convened in accordance with *Working Together to Safeguard Children*. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that teachers and other academy staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.
- 4.12 Where it is clear that an investigation by the police or children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the LADO will discuss the next steps with the case manager. The options open will depend on the nature of the allegation and the evidence and information available. This will range from taking no further action to dismissal or a decision not to use a person's services in the future.

5.0 Informing the staff member

- 5.1 Individuals will be informed of the concerns or allegations as soon as possible and given an explanation of the likely course of action but always after taking advice from the LADO who will liaise with the Police as necessary. The

exception to this is where the LADO advises that this should not happen or where there is an objection from the police or social care services (usually because a strategy discussion is required).

6.0 Suspension

- 6.1 As well as advice from the LADO, the case manager should consult the Focus-Trust HR Representative in order to consider whether suspension is required. Where the LADO advises that suspension is advisable or required, this advice will be given appropriate weight. However, Focus-Trust acknowledges that the power to suspend is vested in it as proprietor and ultimately the case manager will take the decision on a case by case basis having undertaken a risk assessment. At that point the Focus-Trust reserves the right to suspend or not to suspend regardless of advice from the LADO (but always following notification thereof).
- 6.2 Suspension will be considered where there is cause to suspect a child or other children at the academy are at risk of harm or the case is so serious that it might be grounds for dismissal.
- 6.3 When considering the decision to suspend, Focus-Trust will always evaluate and manage the possible risk of harm to children posed by the person accused. But suspension will not be an automatic or default response and Focus-Trust will weigh up the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended.
- 6.4 All options to avoid suspension including those recommended in part 143 of KCSIE will be considered in consultation with the LADO before a decision is made. For academy based staff the Head has the authority to suspend an employee. For Principals the decision to suspend will be taken by the Chief Executive.
- 6.5 In cases where the academy is made aware that the Secretary of State has made an interim prohibition order in respect of an individual at the academy it will be necessary immediately to suspend that person from teaching pending the findings of the NCTL's investigation.
- 6.6 When the decision is taken to suspend, the rationale for suspension and the alternatives that were considered will be recorded by both the case manager and LADO.
- 6.7 Where suspension is used, written confirmation will be dispatched within 1 working day, giving as much detail as appropriate for the reasons for suspension. The written notification will include the details of a named contact within the organisation.

7.0 Investigation

- 7.1 The LADO and case manager will discuss how and by whom the investigation will be undertaken. Investigation can often be undertaken by a senior member of staff or a senior member of staff from another Focus-Trust academy.

7.2 In some circumstances, either because of lack of resource or because of complexity, an independent investigator will be appointed.

8.0 Duty of care for employees

8.1 As an employer, Focus-Trust has a duty of care to all employees. Focus-Trust provides counselling support via a third party helpline to any staff member facing an allegation and the Focus-Trust Human Resources team (or third party) will always be available to provide welfare advice.

8.2 Individuals subject to an allegation will always be advised to contact their trade union representative, if they have one, or a colleague for support.

8.3 If suspended, we provide a named contact to keep the staff member informed of both progress of their case and current work-related issues, as well as to consider (and liaise as necessary within the Human Resources team) what other support is appropriate for the individual.

8.4 If suspended, Focus-Trust will make it clear whether it is possible for the employee to have contact with other work colleagues; depending whether such contact is likely to be prejudicial to the gathering and presentation of evidence.

9.0 Communication with parent/carer

9.1 Parent/carers of a child or children involved will be told about the allegation as soon as possible if they do not already know of it.

9.2 The case manager will not communicate with the parent/carer until advised to do so if a strategy discussion is required. In this case, the case manager will only communicate with the parent/carer following authorisation from the police or children's social care services and agreement as to what information can be disclosed.

9.3 Parents and carers should be made aware of the prohibition on reporting or publishing allegations about teachers in section 141F of the Education Act 2002. Parents and carers who wish to apply to the court to have reporting restrictions removed should be told to seek legal advice.

9.4 The parent/carer will 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. In deciding what information to disclose, Focus-Trust will give careful consideration to the provision of the Data Protection Act 1998 and, where relevant, the Human Rights Act 1998.

10.0 Outcome of an investigation

10.1 When determining the outcomes of allegation investigations, the following definitions will be applied:

- Substantiated: there is sufficient evidence to prove the allegation;
- Malicious: there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- False: there is sufficient evidence to disprove the allegation;
- Unsubstantiated: there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

11.0 Resignations and Referrals

- 11.1 If the accused person resigns, or ceases to provide their services, this will not prevent an investigation being followed up as outlined above.
- 11.2 A referral to the DBS will still be made in these circumstances (in consultation with the LADO) re any person who has been removed from working (paid or unpaid) in regulated activity, or would or might have been so removed had they not resigned or left of their own accord and we believe the person may have:
- harmed a child;
 - caused a child to be harmed;
 - put a child at risk of harm;
 - attempted to harm a child;
 - incited another to harm a child (physical, emotional, sexual or neglect); or
 - if there is reason to believe the member of staff has committed one of a number of listed offences under the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (as amended) (See Keeping Children Safe in Education 2015 for link to list of offences).
- 11.3 Where a referral has been made to the DBS, it is not necessary for a referral to also be made to the NCTL, as information is shared between the two bodies. Where a dismissal does not reach the threshold for DBS referral, separate consideration must be given to an NCTL referral. A NCTL referral must be considered where a teacher has been dismissed (or would have been dismissed had he/she not resigned) and a prohibition order may be appropriate.
- 11.4 If the above criteria are met, in no circumstances will Focus-Trust enter into a settlement/compromise agreement.
- 11.5 Focus-Trust will make every endeavour to complete the investigation and due process; even where the person concerned refuses to cooperate. Similarly, where an employee's notice of employment expires, Focus-Trust will always endeavour to complete the investigation and reach a conclusion. Settlement agreements will not be used in these cases.

12.0 Record keeping

- 12.1 The Case Manager is responsible for compiling a clear and comprehensive account of an allegation or concern, including details about the discussions with the child; discussions with the parent; discussions with other members of staff, the DSL, the Principal and the LADO and/or discussions with any other

relevant person; how it was followed up and resolved, the decisions reached and the action taken. A copy of the written referral to the LADO, confirming the verbal and telephone referral shall also be kept.

- 12.2 A central record of allegations in each academy must be securely held by the Principal, who is responsible for passing this record on to their successor. He or she, in liaison with the DSL, must also pass allegations or concerns about an individual pupil onto their next academy, if appropriate.
- 12.3 Details of allegations that are found to be malicious will not be held on HR records.
- 12.4 For allegations, other than malicious, a record of the allegation, follow up and resolution will be kept on the individual's HR record and a copy of the document provided to the employee.
- 12.5 The written record is kept to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time.
- 12.6 The written record will be retained at least until the employee has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer.
- 12.7 The Information Commissioner's guidance contained in its Employment Practices Code will be followed in respect of employee records.

13.0 References

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

14.0 Timescales

- 14.1 Focus-Trust will always work to conclude investigations as quickly as possible whilst ensuring a thorough, rigorous and fair process. It is acknowledged that when dealing with allegations or concerns, the process can be halted or slowed by the need to work with a range of external agencies.

We recognise the target timescales (below) outlined in Keeping Children Safe in Education 2015:

- 80% of cases should be resolved within 1 month
- 90% of cases should be resolved within 3 months
- The most exceptional cases should be completed within 12 months

- 14.2 Where it is clear immediately that the allegation is unsubstantiated or malicious, we aim to resolve the case within 5 working (academy) days.

- 14.3 Where the initial consideration decides that the allegation or concern does not involve a possible criminal offence or meet the other criteria in 3.1 above it will be dealt with as an internal, Focus-Trust, issue. Where however there are any doubts or concerns regarding child protection, advice will always be taken from the LADO.
- 14.4 If the nature of the allegation does not require formal disciplinary action, Focus-Trust will aim to institute appropriate action within 3 working (academy) days.
- 14.5 If a disciplinary hearing is required and can be held without further investigation, the hearing will normally be held within 15 working (academy) days.

15.0 Conclusion of a case

- 15.1 In the case of an allegation being substantiated and the person is (i) dismissed, or (ii) it is decided to discontinue their services, or (iii) the person resigns or ceases to provide services, Focus-Trust will, following liaison between the LADO, case manager and HR representative make a referral to the DBS for consideration of inclusion on the barred list.
- 15.2 A referral will be made to the NCTL if the criteria set out at 11.3 above are met.
- 15.3 Where, on conclusion, it is decided the person can return to work, the case manager will consider how best to facilitate this. This will be dealt with on a case by case basis but may include a phased return, mentoring or counselling. The case manager will also consider how the person's contact with the child or children who made the allegation can best be managed if they are still a pupil/pupils at the academy.
- 15.4 Where a criminal investigation has taken place and either (i) a trial has resulted (ii) the investigation has been closed without charge or (iii) a decision has been taken not to prosecute a case after charge, the case manager will discuss with the LADO what, if any, further action is required as regards the member of staff concerned and the sharing of information obtained by the agencies involved in assisting any further action to be taken by the academy.

16.0 Malicious or unsubstantiated allegations

- 16.1 If an allegation is determined to be unsubstantiated or malicious, the LADO will refer the matter to the children's social care services to determine whether the child concerned is in need of services, or may have been abused by someone else.
- 16.2 If an allegation is shown to be deliberately invented or malicious, the Head (or Chief Executive in the case of an allegation against the Principal) should consider whether any disciplinary action is appropriate against the pupil who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible, even if he or she was not a pupil.

17.0 Lessons learnt

17.1 At the conclusion of each case, the case manager will consider with the LADO whether there are any lessons to be learnt for the future by the academy / Focus-Trust and share this in appropriate ways in order to ensure that the best practice is shared and lessons for the future are taken on board.

18.0 Monitoring and evaluation

18.1 This policy will be reviewed by the Head of Human Resources at Focus-Trust Head Office and revised in accordance with changing national requirements for independent academy. It shall be shared with all staff and made available on the academy website.

Related documents	Academy-specific Child Protection Policies Keeping Children Safe in Education (DfE 2015) - KCSIE
Date for implementation	20 April 2015
Approved by	Focus-Trust Board (by email – taking feedback) Email approval to publication of new Keeping Children Safe in Education 2015
Date of next review	When required by change to statutory guidance
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