Gather, Grow, Go - The Parable of the Mustard Seed (Matthew 13: 31-32)

Practice Guidance: Managing Allegations against Members of Staff

Children's Workforce

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1. Nature of Allegations to Which These Procedures Apply

These procedures should be used in respect of all cases in connection with the person who works with children in either a paid or unpaid (volunteer) capacity where it is alleged that a person 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**

- Behaved towards a child or children in a way that indicates he or she may pose a **risk of harm** to children

- Behaved in a way that indicates they may **not be suitable to work with children** (includes transfer of risk, risk by association).

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

Where concerns arise about the person's behaviour towards his/her own children or any other child. The Police and/or Integrated Children's Services (ICS) should consider if they need to inform the person's employer and/or the Local Authority Designated Officer (LADO) to assess whether there may be implications for children with whom the person has contact at work.

If an allegation relating to a child is made about a person who also undertakes paid or unpaid care of **vulnerable adults**, please refer to the Kent & Medway Safeguarding Adults Board policy document: Managing Concerns around People in Positions of Trust. https://www.kent.gov.uk/ data/assets/pdf_file/0019/111169/Managing-Concerns-around-PeopleinPositions-of-Trust.pdf

Please note that there is no longer an Adult LADO and Kent Children's LADO Service is up to the age of 18 years.

Employees should also be aware of legislation under the Sexual Offences Act 2003 that makes it an offence for those in a position of trust to have a sexual relationship with a young person under the age of 18 years who is currently being cared for or educated by the individual. The government has now extended the Positions of Trust law to the legal protection for 16 and 17 year olds to prevent them being targeted by adults who hold a position of power and influence over them.

2. Cross boundary issues

Generally, where a child makes an allegation in a setting or placement which is outside of the Kent area, the lead responsibility for action lies with the local authority for the area where the alleged abuse occurred.

In those circumstances, the LADO and, where appropriate, the child's social worker will liaise with the relevant local authority and agree a joint strategy. Decisions about which LADO should take the lead are complex and should consider the following:

- Which agency holds the greatest risk? For example, if an agency worker has only worked one day in the setting where the allegation has taken place and will not be returning, it might be that the employment agency holds the most risk.

- Where is organisational learning required? For example, an agency worker may have only worked in a setting for a day, but if the setting did not follow good practice with the worker and this contributed to the incident, the greatest learning might be with the setting.

Checks should be made as to whether there are any other children in the setting or placement. If so, the child's social worker and manager must be informed, and the LADO should consult with them about the action required.

Where the referral relates to a child in care from another local authority temporarily placed in the Kent area, for example in a residential unit, the LADO should liaise with the child's home authority about the roles and responsibilities in carrying out these procedures.

Foster carers are often subject of allegations because of their high level of contact with children and young people. If the foster carer is a Kent carer, resident in the county then the above procedures apply. If however, the foster carer lives within another Local Authority then a referral also needs to be made the Children's Social Work Services in the Local Authority of residence. If the foster carer is resident in Kent but employed by an Independent Fostering Agency (IFA) then the authority in which the IFA is based also needs to be informed and may require a joint investigation with Kent leading on any investigation into the child and the host authority for the IFA leading on matters relating to the foster carer.

3. Historical / complex abuse

When allegations of **historical abuse** are made and where the case involves an allegation against person(s) who work with children this procedure should also be followed and dealt with in the same way as contemporary concerns. Historical abuse in this context relates to an allegation of Neglect, Physical, Sexual or Emotional Abuse made by or on behalf of someone who is now 18 years or over, relating to an incident which took place when the alleged victim was under 18 years old.

In the first instance advice should always be given to the alleged victim to report the concern/abuse to the Police.

Where there are signs of organised or widespread abuse and / or the involvement of other perpetrators or institutions the matter should be dealt with in accordance with the **complex abuse procedures.**

4. Organisations to which these Procedures Apply

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

Organisations that use the services of volunteers or people who are self-employed, as well as service providers, voluntary organisations, employment agencies or businesses, contractors and fostering services.

Regulatory bodies such as Ofsted in the case of child minders, and others that may not have a direct employment relationship with the individual but will need to consider whether to continue to use the person's services, or to approve the person for work with children in future, or to deregister the individual.

In some circumstances, the term 'employer' may encompass more than one organisation e.g., where staff providing services for children in an organisation are employed by a contractor, or where temporary staff are provided by an agency. In those circumstances, both the contractor or agency and the organisation in which the individual works need to be involved in managing the allegation. The LADO will help align accountability for steps to be taken, it is expected in the first instance that the agency/contractor will be the lead investigator.

5. Summary of the process

It is in everyone's interest to resolve cases as quickly as possible, consistent with a fair and thorough investigation. All allegations must be investigated as a priority to avoid any delay. The time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness, and complexity of the allegation.

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

- A police investigation of a possible criminal offence.
- Enquiries and or assessment by ICS about whether a child needs protection,

Or is in need of services,

and/or

- Consideration by an employer / regulatory body of action i.e., internal safeguarding investigation, disciplinary or performance management in respect of the individual.

6. Initial Considerations

If there is an immediate risk, appropriate actions may need to be taken e.g., urgent involvement of Police, removal of member of staff, securing evidence or urgent medical attention. This may include the need for a referral to be made to the Front Door Service (FDS) in the child's own right. If the child needs immediate safeguarding the LADO will provide support to the referrer around submitting a timely request for support if this has not already been undertaken. Please note that the County LADO Service is not a frontline/emergency service.

Any allegation or concern which arises should be reported immediately to the Senior Manager identified in the employer's internal procedures, unless that person is the subject of the allegation, or where their relationship with the subject could compromise their independence, in which case it should be reported to the designated alternative, who should then send a referral into the County LADO Service. Where there is no Senior Manager e.g., a self-employed person, the matter must be reported directly to the County LADO Service via a referral.

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

The County LADO Service should receive a referral on all allegations that appear to meet the criteria, within **one working day**. This should take place before any investigations commence. In less serious cases, Police and ICS may not need to be involved but the LADO will provide an objective view. The LADO will respond to a referral within **one working day**.

If you are not clear about whether a member of staff or volunteer should be referred across to the County LADO Service, you can call on **03000 410 888** and ask to speak to the **LADO Enquiries Officer**. In doing so you can discuss the situation, without disclosing confidential information, and obtain advice on whether a referral should be submitted or if you need to be signposted to another service.

7. Low Level Concerns

The Department of Education (DFE) have updated KCSIE (KCSIE): statutory guidance (KCSIE) which came into force on 1 September 2021. Within the revised version they have included guidance on low level concerns.

KCSIE advises education to develop a low level concerns policy and to keep a record of concerns. The County LADO Service advocates for education to have a culture in which all concerns about adults are shared responsibly and with the right person, recorded and dealt with appropriately.

It is advised that the evaluation of low level concerns can be shared with the LADO Enquiries Officer to support education settings in their decision making. This permits concerns to be evaluated objectively and to ascertain whether similar concerns may have been raised by a previous employer. The LADO will only record those allegations which appear to meet the threshold for consideration within these procedures, the employer should record any concern that arises in respect of a member of their staff.

8. Referral to the County LADO Service and Initial Actions

Where appropriate a referral should be sent to the County LADO Service, giving as much detail as possible, ensuring the information provided is appropriate, concise and easy to follow.

Professionals MUST complete the LADO referral online via the Integrated Kent Children's Services Portal:
https://webapps.kent.gov.uk/KCC.ChildrensPortal.Web.Sites.Public/Default.aspx

Currently the **Public Referral form** is located on the KSCMP website. The referral form would need to be completed and emailed into the service via the mailbox: KentchildrensLADO@kent.gov.uk

The County LADO Service will acknowledge receipt of the referral and a LADO will either speak with the referrer or the employer for the member of staff referred. Where necessary a LADO will obtain further details of the allegation and the circumstances in which it was made. The discussion should also consider whether there is evidence/information that establishes that the allegation is false or unfounded. The LADO may ask the referrer to complete **Initial fact finding** which looks at what has been said by the young person, what is said by the staff involved and the incident reports completed, possible CCTV.

A LADO will consult, as appropriate, with ICS and/or the Police to consider:

- If an ICS or a Police response may be appropriate and if a Strategy Discussion Meeting or Position of Trust Meeting needs to be held.

- If the allegation should be managed solely by the employer (with the proviso that, if further information comes to light suggesting a child protection response or criminal response may be necessary, then a further consultation will take place).

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

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

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

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

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

Ofsted should be informed of any allegation or concern made against a member of staff in any day care establishment for children under 8 or against a registered child minder. They should also be invited to take part in any meeting/discussion. Ofsted should also be informed of all allegations made against a foster carer, prospective adopter, or member of staff in a residential childcare facility.

9. LADO Position of Trust Meeting

The purpose of a LADO Position of Trust (POT) meeting is to share relevant information relevant to the allegation that has been made and it will decide the strategy for managing the allegation. This should be held within 2-5 working days of the LADO referral being received.

The LADO will exercise their professional judgement in their decision making, having considered the Harm Threshold, as to whether a POT meeting will be convened. This includes consideration of the following:

- Harming or placing a child at risk of harm by the person's own behaviour(s)
- Failure to take action to prevent harm by another person
- Failure to recognise or accept risk posed by another person e.g., by denial or minimisation Inciting harm by another person
- Failure to follow safeguarding guidance, policies, and procedures, including safer working practice guidance
- Failure to recognise or meet a child's welfare or care needs
- Circumstances where, on a particular occasion, harm has not been caused to a child, but, if repeated, may do so, either to that child or another child, any behaviour that may suggest a future risk of harm e.g., viewing child abuse images; behaviour that could constitute grooming; violence; bullying or frightening children.

POT meetings will be chaired by the LADO. They will be attended by the police, social worker (if one) and the employer. The employer is advised to bring a Human Resources advisor. In situations where the allegation is against a health professional, the Designated or Named Nurse for safeguarding should be invited.

Professionals involved in this process should maintain confidentiality. Information sharing should be restricted to those who need to know, to protect children, to facilitate enquiries, to manage related disciplinary process, or to determine whether an individual is suitable to work with children.

The meeting should:

- Address the scope of the investigation including other children at possible risk

- Consider whether any parallel disciplinary process can take place and agree protocols for sharing information
- Consider the current allegation in the context of any previous allegations or concerns
- Where appropriate, take account of any entitlement by staff to use reasonable force to control or restrain children
- Consider whether a complex abuse investigation is applicable
- Plan enquiries if needed, allocate tasks and set timescales
- Decide what information can be shared with whom and when

The meeting should also:

- Ensure that the child/ren involved and or affected are safeguarded, including taking emergency action where necessary
- Consider what support should be provided to all children who may be affected
- Consider what support should be provided to the member of staff and others who may be affected and how they will be kept up to date with the progress of the investigation
- Ensure that investigations are sufficiently independent
- Make recommendations where appropriate regarding suspension, or alternatives to suspension
- Identify a lead contact manager within each agency
- Agree protocols for reviewing investigations and monitoring progress by the LADO, having regard to the target timescales
- Consider issues for the attention of senior management (e.g. media interest, resource implications)
- Consider reports for consideration for barring
- Consider risk assessments to inform the employer's safeguarding arrangements
- Agree dates for future meetings/discussions

It is vital to agree how the member of staff concerned and how the parents of the child/ren are informed of the concerns and the planned action. Ensure it is agreed what information can be shared at each stage and who is responsible for informing them.

<u>Subsequent meetings:</u>

A final meeting should be held to ensure that all tasks have been completed, including any referrals to the DBS if appropriate, and, where appropriate, agree an action plan for future practice based on lessons learnt.

It may be appropriate to hold an interim POT meeting to review status of actions and next steps. Police and internal investigations are timely and need to be reviewed regularly. The member of staff and child/ren also need to be updated regularly and welfare support afford to them throughout. It may be appropriate to meet in the interim to check on the progress of these and to support various parties in executing their allocated actions.

If the member of staff lives in a **different authority area** to that which covers their workplace, liaison should take place between the relevant agencies in both areas and a joint meeting convened.

Where the allegation of abuse had been made against someone closely associated with a member of staff, the POT meeting should consider:

- The capacity and willingness of the member of staff to adequately protect the child/ren concerned.
- Whether measures need to be put in place to ensure their protection.

and

- Whether the role of the member of staff is compromised.

10. Referral Outcomes

No further action

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

- Agree what information should be put in writing to the individual concerned by the Senior Manager.
- Identify any action in respect of those who made the initial allegation.

and

- Consider what information should be shared with the child and their parents / carers and by whom.

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

Disciplinary / internal safeguarding investigation

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

For all safeguarding investigations the investigating officer should aim to provide a report to the employer within **10 working days**. On receipt of the report, the employer should determine an allegation outcome and decide whether any further action is required. Where formal disciplinary

action is needed in addressing concerns regarding conduct, action should be taken promptly without undue delay.

It is acknowledged that there will be some investigations that may not be able to meet the 10 working day timeframe. This is likely to be a result of protracted matters such as staff ill health, referrals to Occupational Health and potential HR processes. However, the LADO MUST agree the timeframe and keep it under review with the employer to ensure a fair, impartial and timely process is in place.

The investigation report and outcome must be shared with the LADO for allegation management oversight and quality assurance (QA). It is expected that this will be no later than **15 working days** from the start of the investigation. The LADO has **7 working days** to QA and feedback on the investigation report.

The LADO will also consider with the Senior Manager what information should be shared with the child and their parents/carers and by whom. Feedback to the child/young person is important and should be completed within **7 working days** of the outcome of the investigation by the nominated person.

It is important to note that the allegation management or criminal investigation has different objectives from the disciplinary procedure and the two processes should not be confused.

11. Action following strategy or POT Meeting

Where the strategy or POT meeting decides that an investigation by the police or ICS is unnecessary, the LADO should discuss the next steps with the Senior Manager.

If a criminal investigation is required, the police will aim to complete their enquiries as quickly as possible, consistent with a fair and thorough investigation, and will keep the progress of the case under review. They should at the outset set a target date for reviewing progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to proceed with the investigation, charge the individual with an offence, or close the case. Wherever possible that review should take place no later than **four weeks** after the strategy or POT meeting. Dates for subsequent reviews, ideally at **fortnightly** intervals, should be set at the meeting if the investigation continues.

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

12. Action following a criminal investigation or a prosecution or where ICS have undertaken an assessment

The police or the CPS should inform the LADO immediately of any case disposal decisions and court appearances and when the criminal investigation is completed.

The police should inform the alleged victim and their parents / carers of the outcomes once the investigation and / or prosecution is concluded.

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

If ICS have undertaken an assessment, they should seek permission to share the information they have which may be relevant to a disciplinary case. The LADO can request, via an established protocol with Kent Police, on behalf of the employer release of police evidence for use in subsequent disciplinary proceedings. (refer to section 16).

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

13. Action on Conclusion of a Case

Where investigations are concluded, the LADO should consider whether convening a standalone POT meeting to share relevant information, categorise the allegation and agree any further action to be taken would be beneficial.

- To hold a discussion regarding the concerns raised in relation to the member of staff and subsequent actions taken to address their suitability to work within the children's workforce.
- To update on any investigation and or progression of any child protection enquiries or concerns.
- To clarify what the current risks are and what we may still be concerned about. Addressing whether there are concerns remaining for transferrable risk for the employer.
- Identifying any complicating factors – What is complicating the situation and what do we need to know more about?
- To clarify whether the member of staff has any other employed or voluntary role within the children's workforce or does the person have children living in the household who may be at risk?
- It may be beneficial to establish a timeline of events in complex cases.
- To look at learning across the multi agencies re rationale and steps taken.

Where an internal safeguarding investigation/disciplinary process is concluded, the employer needs to come to a reasonably held view **'on the balance of probability'** – under allegation management and with the adjudication of the LADO, regarding the outcome in line with allegation management categories. There is an outcome form that employers may wish to use that will help with setting out the recommended outcome, steps taken and rationale regarding internal actions. This is available on KSCMP and KELSI websites.

14. Allegation Outcome Categories

Substantiated
There is sufficient identifiable evidence to **prove** the allegation. Employer to refer to DBS.

False
There is sufficient evidence to **disprove** the allegation.

Malicious
There is clear evidence to prove there has been a **deliberate act to deceive** and the allegation is **entirely false**.

Unfounded
There is **no evidence or proper basis** which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively, they may not have been aware of all the circumstances.

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

For all allegations a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, a note of any action taken, and the decisions reached should be kept on the confidential personnel file of the individual concerned and a copy of this should be provided to the individual.
If an investigation has not been undertaken for the following reasons:

- Member of staff resigned or is no longer in post
- Member of staff refused to engage in the process or fails to respond to the employer
- Member of staff off work due to ill health/stress for considerable time

The employer would be asked by the LADO to consider all information to date to determine a decision based on 'balance of probability'. If there is compelling evidence that the allegation did occur the outcome will be recorded as substantiated. The employer would need to continue attempts to engage with the member of staff and inform them of the outcome and any subsequent referrals made to the DBS.

15. Disclosure and Barring Service (DBS)

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

Professional Regulatory Body is required. The following groups have a legal duty to refer information to the DBS:

Regulated Activity providers (employers and volunteer managers);

- Personnel suppliers.
- Groups with a power to refer.

The following groups have a power to refer information to the DBS:

- Local authorities (safeguarding role).
- Health and Social care (HSC) trusts (NI).
- Education and Library Boards.
- Keepers of registers e.g., General Medical Council, Nursing and Midwifery Council.
- Supervisory authorities e.g., Care Quality Commission, Ofsted.

16. Action in respect of Unfounded or Malicious Allegations

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

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

17. Learning Lessons

At the conclusion of a case the LADO should consider whether there are any improvements to be made or lessons to be learned. This should include, where appropriate, consideration of the employer's procedures or practice to help prevent similar events in the future, including issues arising from the decision to suspend the member of staff, the duration of the suspension and whether suspension was justified. Equally, this process should address if there are any lessons learnt for the County LADO Service, and / or whether there is any good practice identified.

18. Escalations

The County LADO Service has escalation guidance which is in place to clarify the process of raising concerns that have arisen through practice issues and decisions linked to allegation management. It clarifies boundaries and channels of decision-making around escalating concerns within the Children's Workforce to resolve matters quickly and where appropriate reflect on lessons learnt. This guidance should be read alongside the KSCMP – Resolving Professional Disagreements and the Escalation of Professional Concerns procedures.

Useful Information

1. The Children's Workforce

There is no clear definition of what is meant by the 'Children's workforce and or working with children' in the national guidance.

Therefore, it is determined that this includes all paid or unpaid staff, supply staff and volunteers who are in a position of trust/ where they have regular and close contact with children and would be viewed by them as a trusted adult.

All individuals who are in **Regulated Activity** will be deemed to be working with children, i.e.:

- teach, train, instruct, care for, or supervise children or provide advice /guidance on wellbeing, or drive a vehicle only for children
- work in Regulated Establishments (schools, children's homes, and childcare premises) and
- the work is regular (once a week or more often, or 4 or more days in a 30 day period) or overnight (2am to 6am) or
- undertake relevant personal care or health care by or supervised by a professional
- registered child minders and foster-carers
- All individuals who are volunteers working supervised with children who would be in Regulated Activity if they were not supervised
- Those who do not fit criteria for regulated activity because they do not pass the frequency test but otherwise 'work with children' in one of the specified activities or establishments
- Those who manage the above.

2. Roles and Responsibilities

Named Senior Officer

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

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

Local Authority Designated Officer (LADO)

- To provide advice and guidance to employers and voluntary organisations around allegations and concerns regarding paid and unpaid workers.

- To ensure the child's voice is heard and that measures are in place to prevent further harm or abuse and that where required, referrals are made to the Front Door.
- To liaise with the police and other agencies including Ofsted and professional bodies such as the General Medical Council and the Teaching Regulation Agency.
- To monitor the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process.
- To coordinate all allegations and concerns made against a person who works with children within Kent.
- To resolve any inter-agency issues.

Police

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

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

Please refer to the Kent Protocol between Kent Police Force and the County LADO Service.

Senior Manager

All employers should have a designated Senior Manager in their organisations to whom allegations or concerns should be reported, who should follow these procedures.

Employers should also designate another person to fulfil this role in the absence of the designated senior manager or where that person is the subject of the allegation.

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

3. Regulatory/Governing Bodies

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

Ofsted should be informed of:

i) Providers of Early Years' and Childcare

Registered providers must inform Ofsted of any allegations of serious harm or abuse by any person living, working, or looking after children at the premises (whether the allegations relate to harm or abuse committed on the premises or elsewhere). Registered providers must also notify Ofsted of the action taken in respect of the allegations. These notifications must be made as soon as is reasonably practicable, but at the latest within 14 days of the allegations being made.

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

Reference:

- Statutory framework for the early year's foundation stage - Setting the standards for learning, development and care for children from birth to five April 2017
- The early years foundation stage (welfare requirements) regulations 2012

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

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

- Any serious complaint about the home or persons working there
- The instigation and outcome of any child protection enquiry involving a child accommodated at the home. Reference:
- The Children's Homes (England) Regulations 2015

iii) <u>Residential Family Centres</u>

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

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

Reference:

- The Residential Family Centres (Amendment) Regulations 2013
- Residential family centres: national minimum standards March 2013

iv) <u>Independent Fostering Agencies</u>

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

- Any serious complaint about any foster parent approved by the fostering agency

- The instigation and outcome of any child protection enquiry involving a child placed with foster parents.

Reference:

- Fostering Services (England) Regulations March 2011

v) Adoption Support Agencies & Voluntary Adoption Agencies

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

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

Reference:

- Statutory guidance on Adoption for local authorities, voluntary adoption agencies and adoption support agencies (England) July 2013
- The Adoption and Care Planning (Miscellaneous Amendments) Regulations 2018

4. Whistle-Blowing

All staff should feel confident to voice concerns about the attitude or actions of colleagues. It is the responsibility of each agency to advise their staff to access its internal whistle blowing policy. This should form part of staff members' induction process. If a member of staff believes that a reported allegation or concern is not being dealt with appropriately by their organisation, they should report the matter to the County LADO Service.

5. Education

KCSIE (KCSIE), Department of Education offers schools clear guidance on managing allegations against staff.

In addition, there is detailed guidance (see Use of Reasonable Force: Advice for headteachers, staff and governing bodies) issued by the government around the use of physical interventions in classrooms. All schools and educational establishments should ensure that they have robust recording systems to log any incidents that have resulted in the use of physical intervention. All

schools should have physical intervention policies that are in line with the Department for Education guidance.

All schools and settings are required to establish a Code of Practice for all staff, which considers the following areas. The Teacher Standards document (2011, updated 2021) provides a clear outline of expectations.

- Out of school contact with pupils.
- Physical contact with pupils.
- Personal care of pupils.
- Relationships and attitudes.
- Extra-curricular activity.
- Reporting of incidents.
- Risk Assessment and lone working
- Use of e-mail and mobile phones

'Guidance for Safe Working Practice for Adults who work with Children and Young People 2019' (published by the Allegations Management Advisors network on behalf of DCSF). This document can help to inform practice and can be accessed via KELSI.

In relation to Disqualification, an individual may be disqualified from working in a provision for something they have done themselves, however, schools and settings are no longer required to establish whether a member of staff providing, or employed to work in, childcare is disqualified by association, unless working in a residential setting. (Disqualification under the childcare Act 2006 [2018 update]).

The safeguarding service within The Education People (TEP) would not normally be involved in an internal management investigation unless the role of expert witness or investigating officer was specifically commissioned by the school or setting. In such circumstances the roles need to be clearly defined in terms of objectivity and impartiality.

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

Voluntary Aided Roman Catholic Schools should also inform the Archdiocese of Southwark Kent Schools' Commission and Voluntary Aided Church of England Schools should also inform the Canterbury or Rochester Diocesan Board of Education; the appropriate Director within Education is the contact in each case.

6. Guidance Targets for Conclusion of Cases

The following suggested targets should be aspired to in all but truly exceptional cases:

- 80 per cent of cases should be resolved within **one month**

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

7. Conflict of Interest/Impartiality

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

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

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

8. Information Sharing

Sharing of information between practitioners and organisations is essential for effective identification, assessment, risk management and service provision. Fears about sharing information cannot be allowed to stand in the way of the need to safeguard and promote the welfare of children and young people at risk of abuse or neglect.

Information sharing is essential for effective safeguarding – reduces the risk of harm and promotes the child's well-being. Kent LADOs aim for transparency and seek consent where appropriate.
Please remember that you do not need consent if safety may be at risk.
The County LADO Service adhere to the Kent and Medway Information Sharing Agreement that can be found on the KSCMP website.

9. Suspension

The possible risk of harm to children posed by the accused person needs to be effectively evaluated and managed in respect of the child(ren) involved in the allegations. In some cases that will require the Senior Manager to consider suspending the person until the case is resolved. Suspension must not be an automatic response when an allegation is reported. If the Senior Manager is concerned about the welfare of other children in the community or the employee's family, those concerns should be reported to the LADO, ICS or police but suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension should only be considered in cases where:

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

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

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

- Redeployment with the establishment so that the individual does not have direct contact with the child or children concerned
- Providing an assistant to be present when the individual has contact with children
- Redeploying to alternative work so the individual does not have unsupervised access to children
- Moving the child or children where they will not encounter the member of staff, making it clear that this is not a punishment and parents have been consulted, or
- Temporarily redeploying the member of staff to another role or in a different location.

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

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

10. Supporting those involved

The child and their parents/carers: All children should be updated at appropriate stages about allegations that involve them. It is important that the allegation management keeps the child's lived experience at the centre of the process. Children need to know that they were heard, and actions have followed. Equally it is important to ensure that when the investigation has concluded feedback is provided to them. Whilst certain details may not be able to be shared the process and impact for them needs to be revisited to ensure they feel supported and safe. Where appropriate,

consideration should also be given to informing the parent / carer about the allegation and who should do this as it is not the LADO role.

In cases where a child may have suffered significant harm, or there may be a criminal prosecution, ICS or the police as appropriate, should consider what support the child or children involved may need. This is likely to consider requests for support if the child is not known to ICS. Similarly, where a child has been harmed the employer should consider what support they should offer the child.

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

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

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

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

11. Confidentiality

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

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

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

Teachers: The Education Act 2011 introduced reporting restrictions preventing the publication of any material that may lead to the identification of a teacher who has been accused by, or on behalf of, a pupil from the same school. The legislation makes it an offence for any matter relating to the person to be included in any publication if it is likely to lead members of the public to identify the person as the teacher who is the subject of the allegation. Publication is defined as: any speech, writing, relevant programme, or other communication in whatever form, (including social media) which is addressed to the public at large or any section of the public. It does not include an indictment or other document prepared for use in particular legal proceedings, nor a document published by the regulator of a profession of which the person who is the subject of the allegation is a member in connection with disciplinary proceedings in relation to the person.

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

The restrictions cease to apply:

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

NB. The Education Act 2011 guidance on reporting restrictions only apply to teachers but this is good practice for all employers to consider.

12. Resignations and settlement agreements

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

It may be difficult to reach a conclusion in these circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

By the same token so called 'settlement agreements', (previously known as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, must not be used in these cases. A settlement agreement will not prevent a police investigation where that is appropriate, nor does it override the statutory duty to make a referral to the DBS.

13. Referrals to the Disclosure and Barring Service (DBS) AND/OR Regulatory bodies

DBS

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

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

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

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

Local authorities, schools, FE colleges and other bodies all have a statutory duty to make reports, and to provide relevant information to the DBS. Referrals should be made as soon as possible after the resignation or removal of the member of staff involved and within one month of ceasing to use the person's services.
Under the Safeguarding and Vulnerable Groups Act 2006 the following groups have a **legal power** to refer:

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

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

Regulatory Bodies

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

14. Record Keeping

All those involved in dealing with allegations against persons working with children, including the person to whom the allegation is made in the first instance, should make clear, accurate and comprehensive records which should be signed, dated, and timed. The record should provide details of the allegation, how it was followed up and resolved and notes of any action taken and decisions made. A comprehensive summary of this should be made and a copy kept on the personnel file and copy of given to the individual. Comprehensive notes should be made of any strategy and evaluation discussions which are agreed by and distributed to all present. These should be held on the confidential personnel file but not shared with the individual concerned.

The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS Disclosures reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation resurfaces after a period of time.

Please refer to the CLS Privacy Notice and Retention policy

15. References

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

In addition, where the allegation was proven to be unsubstantiated, unfounded, or malicious, information should not be included in employer references. A history of repeated concerns or allegations which have all been found to be unsubstantiated, unfounded, or malicious should also not be automatically included in any reference but considered contextually around the appropriateness to share patterns relating to potential risk.

16. Allegation Management Protocol with Kent Police for the Release of Evidence

1. In line with the requirements of DfE Guidance**: Working Together to Safeguard Children** the local authority has agreed a protocol with Kent Police for the release of evidence to inform Internal Disciplinary processes following the conclusion of Police involvement in the case.

2. The release of such evidence is vital to inform disciplinary investigations and to avoid witnesses, particularly children, having to be interviewed again. It states within **KCSIE** - *'Where the police are involved, wherever possible the employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case'*. (para 258). This is agreed across the Children's Workforce in Kent not just for Education settings.

3. To ensure that a consistent format is applied it has been agreed that all requests for the release of evidence should be channelled through the County LADO Service who provide support and guidance to settings whenever an allegation is made against a member of staff.

4. Once the evidence has been received by the Local Authority Designated Officer (LADO) they will liaise closely with the school or setting to ensure that information is shared appropriately, and no additional copies are made and that there is a clear audit line around accountability for keeping documents safe.

5. In cases where statements have been taken from children via digital recording in line with procedures for **Achieving Best Evidence**, a transcript of the recording prepared for court will be provided. In cases that do not proceed to court, however, it is unlikely that a transcript will have been taken. Under these circumstances it is doubtful that the video evidence will be released, as disclosures may be evident that have no bearing on the disciplinary investigation being undertaken. In such cases Kent Police have agreed to provide a summary of the evidence that is relevant to the disciplinary investigation. It is recognised that this will not constitute primary evidence, but such information from Kent Police should suffice to inform a disciplinary process where the burden of proof is based on **"balance of probability"**.

Information shared must be treated in the strictest of confidence and should only be made available to those involved in the disciplinary process.

Ali Watling	**DCI Ian Wadey**
County LADO Manager	**Detective Inspector PPU**
County LADO Service	**Kent Police**
Date August 2023	**Date August 2023**

RELEASE OF EVIDENCE REQUEST

To: DCI Ian Wadey
PPU - Force Headquarters, Sutton Road, Maidstone, Kent, ME15 9BZ **From:** Kent County LADO Service **Date:**

It is understood that:

A Kent Police have undertaken a criminal investigation into the conduct of a member of staff for whom Kent County Council now wish to undertake an internal disciplinary investigation.

B Consent has been sought from the victim and witnesses to release their statements to KCC.

C Kent Police have concluded their criminal investigation.

The LADO, on behalf of KCC now seeks the disclosure of witness statements and / or ABE digital interviews taken by Kent Police for the sole purpose of use in the internal disciplinary investigation into the conduct of the member of staff. KCC understands that Kent Police policy O23a Child Abuse, section 3.31 specifically deals with such a request.

Please accept this pro-forma as a formal request for the release of victim and witness statements and / or crime reports as appropriate.

REQUEST FOR RELEASE OF EVIDENCE

Name of Victim/Complainant/Witness: _____ **Date of Birth:** ----------

Date of Complaint/Allegation: ----------

Name of Accused. (member of staff): ---------- **Date of Birth:** ----------

Home Address: ----------

Name and Address of Employer (school or LA service):

VIT Officer:

Police Area Office:

Social Worker (where appropriate):

ICS Area Office:

LADO Making request for release of evidence

Type of Investigation:

- **What are you seeking to achieve?**
- **What information needs clarity?**

Date of Final Strategy Meeting (where applicable):

Outcome of Police Investigation:

Evidence Requested (please tick)

1 In the absence of above a summary report provided by the Police ☐

2 Athena record (edited or redacted) ☐

3 Initial contact (STORM record) ☐

4 Redacted transcripts of victim's account/witness statement ☐

5 Transcript of Suspect interviews ☐

Please be assured that the information provided will be treated in the strictest of confidence and will not be saved or copied to other parties.

Thank you for your co-operation in this matter.

Ali Watling - 03000 410888
County LADO Manager
County LADO Service
Kroner House - Eurogate Business Park
Ashford
Kent TN24 8XU