
We honour God through our actions



Priory RC Primary School

St Catherine's Road

St Marychurch

Torquay

TQ1 4NZ

Policy: Managing allegations against staff

NB; This policy should be read alongside the Keeping Children Safe in Education document Sept 2018 and the CAST disciplinary Policy and Procedures July 2017.

Allegations of abuse against staff should not be dealt with under the school's general complaints procedure.

The allegations of abuse by staff procedures are based on the following:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550511/Keeping_children_safe_in_education.pdf updated September 18 with specific reference to Part 4 P40.

Rationale

Handling allegations against staff, particularly serious ones, is a complex and delicate process. It is essential that all establishments should have a procedure and follow the procedure closely taking expert advice and assistance at all stages. This provides effective protection for the child and also supports the person against whom the allegation has been made.

The policy and procedure for dealing with allegations against staff should incorporate the principles of natural justice that underpin disciplinary procedures. These principles are that:

- issues are raised promptly and meetings and decisions should not be unreasonably delayed
- employers act consistently
- employers carry out necessary investigations to establish the facts
- employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made
- employees are given the right to be accompanied at formal disciplinary hearings.

Aims

The overriding obligation of the staff at our establishment is to provide a safe environment for our children/young people and to take appropriate action to make sure they are kept safe. This requires the establishment to identify instances in which there are grounds for concern about the conduct or practice of a member of staff. If an allegation of abuse is made against a member of staff they can expect to be treated fairly. The establishment recognizes and accepts that it has a duty to ensure that they are treated fairly and reasonably and to apply principles of natural justice.

Objectives

The objectives of this policy are that:

- all allegations are taken seriously
- any allegation of abuse against a member of staff, or a volunteer, is dealt with fairly, quickly and consistently
- all staff and volunteers should understand what to do if they receive an allegation against a member of staff or if they themselves have concerns about the behaviour of a member of staff.

Responsibilities

Everyone in the education service shares the objective to help keep children safe. In schools, the governing body has overall responsibility for safeguarding issues and the Head and staff have particular safeguarding responsibilities under this policy.

Procedures and practice

The scope of this procedure

The establishment's procedure for managing cases of allegations of abuse should be followed in all cases where there is an allegation that a member of staff or a volunteer 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 to children.**

There may be up to 3 strands in the response to any such allegation:

- a police investigation of a possible criminal offence
- enquiries and assessment by children's social care about whether a child is in need of protection or in need of services
- consideration by the establishment of disciplinary action in respect of the member of staff.

Guiding principles

- The important points in the managing allegations include:
- procedures need to be applied with common sense and judgement
- all allegations, including those appearing not to be serious, must be seen to be followed up, taken seriously and examined objectively
- Many cases may well either not meet the criteria set out above, or may do so without warranting consideration of either a police investigation or enquiries by local authority children's social care services. In these cases, local arrangements should be followed to resolve cases without delay.
- parents or carers of the child or children involved should be told about the allegation as soon as possible and kept informed of developments. This includes the outcome of any disciplinary hearing but details of the deliberations at a disciplinary hearing should not be disclosed
- the accused member of staff should also be informed as soon as possible and then be kept informed of the progress of the case. In cases where a strategy meeting is needed the member of staff can not be informed until the other agencies have been consulted and agree what information can be given
- if the member of staff has been suspended they should be kept informed of developments at the establishment
- the fact that the member of staff resigns should not prevent an allegation being followed up. Compromise agreements under which the member of staff agrees to resign and the establishment agrees not to pursue disciplinary action should not be used.
- Allegations against a teacher who is no longer teaching should be referred to the police. Historical allegations of abuse should also be referred to the police.

Supporting those involved in the allegation

Parents and carers

The parents or carers of a child or children involved should be told as soon as possible if they do not already know about an allegation. They should be kept informed about the progress of the case, and told the outcome of any police investigation and of any disciplinary process. However although the parents /carers are told the outcome of any disciplinary hearing, the deliberations at the hearing, and the information taken into account in reaching a decision, cannot normally be disclosed.

The member of staff

Employers have a duty of care to their employees. They should ensure they provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended. It is essential that any allegation of abuse made against a teacher or other member of staff or volunteer in a school or college is dealt with very quickly, in a fair and consistent way that provides effective protection for the child and at the same time supports the person who is the subject of the allegation.

If an allegation of abuse is made against a member of staff they can expect to be treated fairly under the procedures. As well they can expect the establishment to take reasonable steps to protect their health and welfare at a particularly stressful time. To this end the establishment will offer support to manage and minimise the inherent stress of the process. The establishment should also keep the member of staff who is the subject of the allegations informed of the progress of the case and consider what other support is appropriate for him/her. That may include support via the local authority occupational health or employee welfare arrangements. If the member of staff has been suspended, the establishment should also keep that person informed about developments (see suspension below). It is very important that the establishment should advise a member of staff who is in a union or professional association to contact that body at the outset.

Initial consideration of an allegation (schools)

An allegation should be reported to the Head immediately. If the Head is absent or if the allegation has been made against the Head the allegation should be reported to the chair of governors. The establishment should contact the local authority straight away and the local authority designated officer (LADO) will discuss the matter with the Head (or chair of governors). The objective of this discussion is to establish whether there is potential case of abuse that needs to be investigated and the discussions at this stage should consider whether there is evidence or information that establishes that the allegation is false or unfounded.

If the allegation is not patently false and there is cause to suspect that a child is suffering or is likely to suffer significant harm, the local authority designated officer will immediately refer to children's social care and ask for a strategy discussion to be convened straight away. Both the local authority designated officer and the head teacher will be involved in that strategy discussion.

If there is reason to suspect that a criminal offence might have been committed, the local authority designated officer will immediately inform the police to decide whether a police investigation is needed. That discussion should also involve the establishment and any other agencies involved with the child.

Action following initial consideration of the allegation

Establishment based action

Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the establishment to deal with it. If the nature of the allegation does not require formal disciplinary action, the head teacher should institute appropriate action as quickly as possible. This could be an informal reprimand or agreed support/training for the member of staff. This should normally take place within 3 working days. If a disciplinary hearing is required and can be held without further investigation, that hearing should be held as quickly as possible and within 15 working days.

The following definitions should be used when determining the outcome of allegation investigations:

- 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.

The initial sharing of information and evaluation may lead to a decision that no further action is to be taken in regard to the individual facing the allegation or concern; in which case this decision and a justification for it should be recorded by both the case manager and the designated officer(s), and agreement reached on what information should be put in writing to the individual concerned and by whom. The case manager should then consider with the designated officer(s) what action should follow both in respect of the individual and those who made the initial allegation.

The case manager should inform the accused person about the allegation as soon as possible after consulting the designated officer(s). It is extremely important that the case manager provides them with as much information as possible at that time. However, where a strategy discussion is needed, or police or children's social care services need to be involved, the case manager should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused. Employers must consider carefully whether the circumstances of a case warrant a person

Schools may wish to use the additional definition of '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.

Where further investigation is required under the disciplinary procedure an investigating officer will be appointed to undertake that investigation. It may be appropriate for the disciplinary investigation to be conducted by a person who is independent of the establishment. The investigating officer should aim to provide a report within 10 working days or if not as soon as is reasonably practicable.

When the report of the disciplinary investigation is received the head teacher/early years manager and chair of governors/deputy manager should consult the local authority designated officer, and decide whether a disciplinary hearing is needed. This decision should be made without any unnecessary delay and will normally be within 2 working days. If the decision is that a hearing is needed it should be held within 15 working days.

The local authority designated officer will liaise with the establishment to monitor progress of the case and provide advice and support when required or requested.

Case subject to police investigation

If a criminal investigation is required the establishment will normally wait for the outcome of the investigation before considering internal action. There can be long delays in the police investigation in to a possible criminal. The police carry out the investigation but the decision whether or not to proceed with a prosecution is made by the Crown Prosecution Service (CPS) when it has considered the results of the police investigation. The police 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. This should include target dates for reviewing progress of the investigation and consulting the CPS about whether to proceed with the investigation, charge the individual with an offence, or close the case.

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 pass all the information they have which may be relevant to a disciplinary case to the establishment via the local authority. This should be done without any unnecessary delay. If children's social care has undertaken enquiries to determine whether the child is in need of protection, any information obtained from those enquiries which is relevant to a disciplinary case should also be passed to the establishment.

If the person is convicted of an offence the police should also inform the local authority straight away so that appropriate action can be taken.

Suspension

Suspension should not be an automatic response to an allegation. This step should be considered in any case where there is cause to suspect a child is at risk of significant harm, the allegation warrants a police investigation or if the allegation is so serious that it could be grounds for dismissal. However, a member of staff should not be automatically suspended if an allegation is made and other options should be considered. These could include moving to work that does not involve contact with children/young persons or leave of absence.

(If there is cause to suspect a child is suffering or is likely to suffer significant harm, a strategy discussion should be convened in accordance with the statutory guidance 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 school and college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.

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 designated officer(s) should discuss the next steps with the case manager. In those circumstances, the options open to the school or college depend on the nature and circumstances 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 the person's services in future. Suspension should not be the default position: an individual should be suspended only if there is no reasonable alternative.

In some cases, further enquiries will be needed to enable a decision about how to proceed. If so, the designated officer(s) should discuss with the case manager how and by whom the investigation will be undertaken. In straightforward cases, the investigation should normally be undertaken by a senior member of the school or college's staff.

However, in other circumstances, such as lack of appropriate resource within the school or college, or the nature or complexity of the allegation, the allegation will require an independent investigator. Many local authorities already provide for an independent investigation of allegations, often as part of the personnel services that maintained schools and colleges can buy in from the authority. It is important that local authorities ensure that schools and colleges have access to an affordable facility for independent investigation where that is appropriate. Legal representation

Employees who are called to a formal disciplinary meeting are legally entitled to take a companion with them. (see CAST disciplinary policy) The companion can be a colleague or a trade union representative, lay or a paid official.

This includes an appeal hearing against disciplinary action but does this include a disciplinary investigation the purpose of which is to see if disciplinary action is necessary. However, it is good practice to allow the employee to have someone present for support.

In a 2010 judgment, the Court of Appeal in *R on the application of G v The governors of X Establishment and Y City Council* (Interested party) ruled that a member of staff accused of child abuse was entitled to legal representation at a disciplinary hearing. The disciplinary procedure allowed staff to be represented by a colleague or union representative. However, the Court ruled that given the potential consequences for him he should have been allowed legal representation and the refusal was in breach of his human right to a fair trial under Article 6 of the European Convention on Human rights.

Supporting those involved

Employers have a duty of care to their employees. They should act to manage and minimise the stress inherent in the allegations process. Support for the individual is vital to fulfilling this duty. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the children's social care services or the police. The individual should be advised to contact their trade union representative, if they have one, or a colleague for support. They should also be given access to welfare counselling or medical advice where this is provided by the employer.

The case manager should appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual. For staff at Priory this may include support via the local authority occupational health or employee welfare arrangements. Particular care needs to be taken 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 should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

Confidentiality

It is extremely important that when an allegation is made, the school or college makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. The Education Act 2002 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 (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.

Parents or carers of a child or children involved should be told about the allegation as soon as possible if they do not already know of it. 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. Parents 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 requirement to maintain confidentiality about any allegations made against teachers whilst investigations are ongoing as set out in section 141F of the Education Act 2002 (see paragraph 163). If parents or carers wish to apply to the court to have reporting restrictions removed, they should be told to seek legal advice.

In cases where a child may have suffered significant harm, or there may be a criminal prosecution, children's social care services, or the police as appropriate, should consider what support the child or children involved may need.

In deciding what information to disclose, careful consideration should be given to the provisions of the Data Protection Act 1998, the law of confidence and, where relevant, the Human Rights Act 1998.

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 provisions commenced on 1 October 2012.

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).

In accordance with the Association of Chief Police Officers' (ACPO) guidance 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, for example 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 designated officer(s), 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.

Outcomes

Returning to work

Unless dismissal or other termination of employment is the outcome of the case the member of staff who has been suspended can be reinstated. In advance of the return to work the establishment and the member of staff should discuss how best to facilitate that. Recognising that the experience will have been very stressful the member of staff will be offered help and support to return to work. This could include a phased return and/or the provision of a mentor for short term assistance and support. The member of staff may wish to continue with welfare counselling that started during the suspension or to have short term counselling support. It is inevitable that the member of staff will have lost confidence in working with child/young persons and this will need to be rebuilt. If the member of staff has concerns about contact with the child/young person or child/young persons who made the allegation those concerns will need to be seriously considered. There may have been a serious breakdown of trust with the child/young person concerned, an undermining of authority or the allegation may have caused an irresolvable conflict.

There will be a proportionate response from the establishment to child/young persons who have made false allegations. An allegation shown to have been deliberately invented or malicious will warrant disciplinary action. Sanctions could include a written apology and agreed ground rules for future behaviour.

There will be other members of staff, children/young persons, parents and others in the establishment community who will know about the allegations depending on what information has got into the public domain. Careful thought will be given to what information is shared with the establishment community when the case is concluded. The views of the member of staff should be taken into account as well as the need to provide information and reassurance to colleagues, children/young persons and parents.

Disciplinary action and dismissal

All decisions reached at the end of a disciplinary process, including dismissal, should satisfy the four stage test referred to in employment tribunal case law:

- did the employer have a genuine belief that the employee was guilty of the misconduct in question?
- did the employer have reasonable grounds to sustain that belief?
- had he carried out as much investigation as was reasonable?
- was the sanction a fair sanction?

The panel considering a disciplinary case must consider all the relevant evidence presented to them and decide on the balance of probabilities whether the employee's behaviour has posed or could pose a risk to children to whom the establishment owes a duty of care. Also relevant is whether the employee's behaviour has compromised or could be seen to have compromised the ability and reputation of the establishment to safeguard children by a failure to uphold the standards expected of staff. The disciplinary panel should have had no prior involvement that might prejudice their ability to hear the case fairly. They should understand that the establishment must have a priority to safeguard children.

The fact that there has not been a criminal investigation or no charge or conviction is not a defence for an employee in disciplinary proceedings. The disciplinary panel may have evidence before it which amounts to professional misconduct which leads to a questioning of the employee's suitability to work within a position of trust even when no criminal activity has been identified or the employee has been acquitted of criminal charges. The "balance of probability" test is a lower threshold than the burden of proof in criminal cases which requires the case to be proved "beyond reasonable doubt". "On the balance of probabilities" means more likely than not.

Resignations and “compromise agreements”

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. A referral to the DBS must be made, if the criteria are met. 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 or college from making a DBS referral when the criteria are met would likely result in a criminal offence being committed as the school or college would not be complying with its legal duty to make the referral.

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. But 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.

‘Settlement agreements’ (sometimes referred to 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, should not be used in cases of refusal to cooperate or resignation before the person's notice period expires. Such an agreement will not prevent a thorough police investigation where that is appropriate

Records

Details of allegations that are found to have been malicious should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential personnel file of the accused, and a copy provided to the person 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 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. The record 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.

The Information Commissioner has published guidance on employment records in its Employment Practices Code and supplementary guidance, which provides some practical advice on record retention.

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

Oversight and monitoring

The designated officer(s) has overall responsibility for oversight of the procedures for dealing with allegations, for resolving any inter-agency issues, and for liaison with the Local Safeguarding Children Board (LSCB) on the subject. The designated officer(s) will provide advice and guidance to the case manager, in addition to liaising with the police and other agencies, and monitoring the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals, depending on the complexity of the case.

Police forces should also identify officers who will be responsible for:

- liaising with the designated officer(s);
- taking part in the strategy discussion or initial evaluation;
- subsequently reviewing the progress of those cases in which there is a police investigation; and
- sharing information on completion of the investigation or any prosecution.

Specific actions following a criminal investigation or a prosecution

The police should inform the employer and designated officer(s) immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances, the designated officer(s) should discuss with the case manager whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police and/or children's social care services should inform that decision. The options will depend on the circumstances of the case and the consideration will need to take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

On conclusion of a case: 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 designated officer(s) should discuss with the case manager and their personnel adviser whether the school or college will decide to make a referral to the DBS for consideration of whether inclusion on the barred lists is required; and, in the case of a member of teaching staff, whether to refer the matter to the NCTL to consider prohibiting the individual from teaching.

There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct that harmed (or is likely to harm) a child; or if a person otherwise poses a risk of harm to a child.

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a 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 case manager should 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 at the school or college.

In respect of malicious or unsubstantiated allegations

If an allegation is determined to be unsubstantiated or malicious, the designated officers(s) should 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. If an allegation is shown to be deliberately invented or malicious, the headteacher, principal or proprietor 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.

Learning lessons

At the conclusion of a case in which an allegation is substantiated, the designated officer(s) should review the circumstances of the case with the case manager to determine whether there are any improvements to be made to the school or college'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 learnt from the use of suspension when the individual is subsequently reinstated. The

designated officers(s) and case manager should consider how future investigations of a similar nature could be carried out without suspending the individual.

Signed:



Dated: September 2018

Author: Cathy Lowry

Implementation date: November 2010

Reviewed and updated: September 18 because of updated KCSIE

Next date for review: October 2019