

ST COLUMBA'S CATHOLIC BOYS' SCHOOL

**GOVERNORS' POLICY STATEMENT**



# Handling Allegations against Staff Policy

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# Allegations made against staff

This policy has been taken from '[Keeping Children Safe in Education](#)' statutory guidance published by the DfE in July 2015 and updated in May 2016 and has been adopted by the Governing Body of St Columba's Catholic Boys' School.

## Duties as an employer and an employee

This part of the guidance is about managing cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) 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 student(s) in a way that indicates he or she would pose a risk of harm to children.

This part of the guidance relates to members of staff who are currently working regardless of whether the alleged abuse took place at the school. Allegations against a teacher who is no longer teaching will be referred to the police. Historical allegations of abuse will also be referred to the police.

St Columba's accepts that it has a duty of care to their employees. The school will 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 is dealt with very quickly, in a fair and consistent way that provides effective protection for the student and at the same time supports the person who is the subject of the allegation.

## Initial considerations

The procedures for dealing with allegations need to be applied with common sense and judgement. 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 will be followed to resolve cases without delay.

Some rare allegations will be so serious they require immediate intervention by children's social care services and/or police. The designated officer(s) will be informed of all allegations that come to the school's attention and appear to meet the criteria so they can consult police and children's social care services as appropriate.

The following definitions will 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.

In the first instance, the Head Teacher, or where the Head Teacher is the subject of an allegation, the Chair of Governors, (the 'Case Manager') will immediately discuss the allegation with the

designated officer(s). The purpose of an initial discussion is for the designated officer(s) and the case manager to consider the nature, content and context of the allegation and agree a course of action. The designated officer(s) may ask the case manager to provide or obtain relevant additional information, such as previous history, whether the student or their family have made similar allegations previously and the individual's current contact with children. There may be situations when the case manager will want to involve the police immediately, for example if the person is deemed to be an immediate risk to children or there is evidence of a possible criminal offence. Where there is no such evidence, the case manager will discuss the allegations with the designated officer(s) in order to help determine whether police involvement is necessary.

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 will be recorded by both the case manager and the designated officer(s), and agreement reached on what information will be put in writing to the individual concerned and by whom. The case manager will then consider with the designated officer(s) what action will follow both in respect of the individual and those who made the initial allegation.

The case manager will 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 will not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused. The school will consider carefully whether the circumstances of a case warrant a person being suspended from contact with children or whether alternative arrangements can be put in place until the allegation or concern is resolved. All options to avoid suspension will be considered prior to taking that step (see further information on suspension which follows).

If there is cause to suspect a student is suffering or is likely to suffer significant harm, a strategy discussion will be convened in accordance with the statutory guidance 'Working Together to Safeguard Children 2015'. If the allegation is about physical contact, the strategy discussion or initial evaluation with the police will take into account that teachers and other school 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) will discuss the next steps with the case manager. In those circumstances, the options open to the school 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 will not be the default position: an individual will 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) will discuss with the case manager how and by whom the investigation will be undertaken. In straightforward cases, the investigation will normally be undertaken by a senior member of staff. However, other circumstances, such as lack of appropriate resource within the school or the nature or complexity of the allegation, may require an independent investigator. This could be sourced from the Local Authority or from other members of the Corpus Christi Partnership.

## **Supporting those involved**

As an employer, St Columba's has a duty of care to its employees. The school will act to manage and minimise the stress inherent in the allegations process. Support for the individual is vital to fulfilling this duty. Individuals will 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 will be advised to contact their trade union representative, if they have one, or a colleague for support.

The case manager will 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. Particular care will 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 will not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

Parents or carers of students involved will 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 will 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 will 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 student will be told the outcome in confidence. In deciding what information to disclose, careful consideration will be given to the provisions of the Data Protection Act 1998, the law of confidence and, where relevant, the Human Rights Act 1998.

Parents and carers will 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 125). If parents or carers wish to apply to the court to have reporting restrictions removed, they will be told to seek legal advice.

In cases where a student 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 student(s) involved may need.

## **Confidentiality**

When an allegation is made, the school will make every effort to maintain confidentiality and guard against unwanted publicity whilst the 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 student from the same school (where that identification would identify the teacher as the subject of the allegation). The reporting restrictions apply until the point that the accused person is charged with an offence, or until the Secretary of State or the General Teaching Council for Wales publishes information about an investigation or decision in a disciplinary case arising from the allegation. The reporting restrictions also cease to apply if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a judge lifts restrictions in response to a request to do so. The 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 will 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 will arise.

## **Managing the situation and exit arrangements**

### **Resignations and ‘settlement agreements’**

If the accused person resigns, or ceases to provide their services, this will 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.**

**Schools and colleges have a legal duty to refer to the DBS anyone who has harmed, or poses a risk of harm, to a child or vulnerable adult; where the harm test is satisfied in respect of that individual; where the individual has received a caution or conviction for a relevant offence, or if there is reason to believe that individual has committed a listed relevant offence; and that individual has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left.<sup>50</sup> The DBS will consider whether to bar the person. Referrals should be made as soon as possible after the resignation or removal of the individual. Guidance on referrals can be found on GOV.UK.**

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 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 will 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, will 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, will 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.

## **Record keeping**

Details of allegations that are found to have been malicious will 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 will 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.

## **References**

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

## **Timescales**

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations will be investigated as a priority to avoid any delay. Target timescales are shown below: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets will be achieved in all but truly exceptional cases. It is expected that 80 per cent of cases will be resolved within one month, 90 per cent within three months, and all but the most exceptional cases will be completed within 12 months.

For those cases where it is clear immediately that the allegation is unsubstantiated or malicious, they will be resolved within one week. Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the school to deal with it, although if there are concerns about child protection, the school will discuss them with the designated officer(s). In such cases, if the nature of the allegation does not require formal disciplinary action, the employer will institute appropriate action within three working days. If a disciplinary hearing is

required and can be held without further investigation, the hearing will be held within 15 working days.

## **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 will 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.

If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to:

- charge the individual;
- continue to investigate; or
- close the investigation.

Wherever possible, that review should take place no later than four weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, will be set at the meeting if the investigation continues.

## **Suspension**

The possible risk of harm to children posed by an accused person will be evaluated and managed in respect of the student(s) involved in the allegations. In some rare cases that will require the case manager to consider suspending the accused until the case is resolved. Suspension is not be an automatic response when an allegation is reported; all options to avoid suspension will be considered prior to taking that step. If the case manager is concerned about the welfare of other students in the school or the teacher's family, those concerns will be reported to the designated officer(s) or police. But suspension is highly unlikely to be justified on the basis of such concerns alone.

Suspension will only be considered in a case where there is cause to suspect a student or other students at the school is/are at risk of harm or the case is so serious that it might be grounds for dismissal. However, a person will not be suspended automatically: the case manager must consider carefully whether the circumstances warrant suspension from contact with students at the school or until the allegation is resolved, and may wish to seek advice from their personnel adviser and the designated officer(s). In cases where the school is made aware that the Secretary of State has made an interim prohibition order in respect of an individual at the school or college it will be necessary to immediately suspend that person from teaching pending the findings of the NCTL's investigation.

The case manager will also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can

be resolved quickly and without the need for suspension. If the designated officer(s), police and children's social care services have no objections to the member of staff continuing to work during the investigation, the case manager will be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternatives will be considered by the case manager before suspending a member of staff:

- redeployment within the school so that the individual does not have direct contact with the student(s) concerned;
- providing an assistant to be present when the individual has contact with students;
- redeploying to alternative work in the school so the individual does not have unsupervised access to students;
- moving the student(s) to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted; or
- temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or work for the local authority or academy trust.

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

If immediate suspension is considered necessary, the rationale and justification for such a course of action will be agreed and recorded by both the case manager and the designated officer(s). This will also include what alternatives to suspension have been considered and why they were rejected.

Where it has been deemed appropriate to suspend the person, written confirmation will be dispatched within one working day, giving as much detail as appropriate for the reasons for the suspension. The school accepts that it is not acceptable to leave a person who has been suspended without any support. The person will be informed at the point of their suspension who their named contact is within the organisation and provided with their contact details.

Children's social care services or the police cannot require the case manager to suspend a member of staff or a volunteer, although they will give appropriate weight to their advice. The power to suspend is vested in the governing body who are the employers of staff at the school. However, where a strategy discussion or initial evaluation concludes that there will be enquiries by the children's social care services and/or an investigation by the police, the designated officer(s) will canvass police and children's social care services for views about whether the accused member of staff needs to be suspended from contact with children in order to inform the school's consideration of suspension. Police involvement does not make it mandatory to suspend a member of staff; this decision will be taken on a case-by-case basis having undertaken a risk assessment.

## **Information sharing**

In a strategy discussion or the initial evaluation of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.

Where the police are involved, wherever possible the school will ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the school's

disciplinary process. This will 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.

Children's social care services should adopt a similar procedure when making enquiries to determine whether the student(s) named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer without delay.

## **Specific actions**

### **Following a criminal investigation or a prosecution**

The police should inform the school 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 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 National College for Teaching and Leadership (NCTL) to consider prohibiting the individual from teaching.

**There is a legal requirement for the school to make a referral to the DBS where it is thought that an individual has engaged in conduct that harmed (or is likely to harm) a student; 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 will 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 will also consider how the person's contact with the student(s) who made the allegation can best be managed if they still attend the school.

### **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 student 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 Head Teacher will consider whether any disciplinary action is appropriate against the student 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 student.

## **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's procedures or practice to help prevent similar events in the future. This will 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.