

HARBOURSIDE LEARNING Partnership

PROCEDURAL POLICY FOR MANAGING ALLEGATIONS OF ABUSE (OF A CHILD) MADE AGAINST A MEMBER OF STAFF

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1. Aims

1.1 Harbourside Learning Partnership is committed to the health and safety of its staff and pupils and will take action to safeguard their well-being. Everyone who comes into contact with children and their families has a role to play in safeguarding children and Harbourside Learning Partnership recognises and actively promotes this duty. This policy should therefore be read in conjunction with the **HLP Safeguarding & Child Protection Policy & Procedures 2017** as well as and the [Teachers' Standards](#).

1.2 Harbourside Learning Partnership recognises that any possibility that a member of staff may have hurt a pupil must be investigated thoroughly but in a way that does not prejudice either the pupil or the member of staff. Any allegations of abuse against staff should be dealt with under this policy and not the Harbourside Learning Partnership general complaints procedure.

1.3 The Trust Board and Local Governing Bodies of Harbourside Learning Partnership will ensure that they comply with their duties under legislation and will have regard to [Keeping Children Safe in Education](#) to ensure that the policies, procedures and training in their schools/academies/colleges are effective and comply with the law at all times.

1.4 The Data Protection Officer/Manager will ensure that high standards of data security and confidentiality are maintained at all times during the abuse allegation investigation and during evidence handling and sourcing.

2. Framework

2.1 The framework for managing cases of allegations of abuse against people who work with children is set out in:

- [Working Together to Safeguard Children](#) (updated 16 February 2017);
- [Keeping Children Safe in Education](#) (updated 5 September 2016); and
- [What to Do if You're Worried a Child is Being Abused](#) (published 26 March 2015).

2.2 It is the responsibility of the Headteacher **to ensure that all staff read part one of [Keeping Children Safe in Education](#)** and a record is kept confirming that this has been completed by each member of staff.

2.3 The [Teachers' Standards](#) which came into force in September 2012 state that teachers, including Headteachers, should safeguard children's wellbeing and maintain public trust in the teaching profession as part of their professional duties.

2.4 This policy has been written in close consideration of Part 4 of KCSiE and should be read in conjunction with this statutory guidance.

3. Definitions

3.1 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.
- **Unfounded:** there is no evidence or proper basis which supports the allegation being made.

4. Initial Allegation

- Any allegation of abuse by a member of staff on a pupil must be reported to the Headteacher and the Designated Safeguarding Lead (DSL).

- If the allegation is against the DSL then this must be reported to the Headteacher unless the Headteacher is the DSL in which case the allegation must be reported to the CEO.
- If the allegation is against the Headteacher then the allegation must be reported to the CEO.

4.1 Should the allegation meet any of the following criteria then the DSL must ensure that the allegation is reported to the Local Authority Designated Officer (LADO) usually by the Headteacher and inform the CEO. The LADO can then consult with Police and children's services as appropriate.

4.2 Where it is alleged that a teacher or other member of staff, including volunteers of Harbourside Learning Partnership 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.

4.3 Some rare allegations will be so serious that they require immediate intervention by Children's Social Care Services and/or Police.

4.4 The initial discussion between the DSL and the LADO will discuss the nature, content and context of the allegation and agree a course of action. The LADO may request the DSL to obtain relevant additional information, such as previous history, whether the child or their family have made similar allegations previously and the individual's current contact with children. Children are classed as vulnerable individuals under data protection law. Data disclosed and processed on any safeguarding topic will be handled with the utmost sensitivity and confidentiality and in accordance with the terms of the *General Data Protection Regulation (GDPR)*.

4.5 If the person referred to in the allegation is deemed to be an immediate risk to children or there is evidence of a possible criminal offence then the Police should be involved immediately.

4.6 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. The sharing of information may lead to a decision that no further action is to be taken. In this case the decision and the reason for it should be recorded by both the DSL and the LADO. They should agree what information should be put in writing to the individual and by whom. They should further agree what action should ensue with regards to the individual who made the initial allegation.

4.7 If the allegation refers to physical contact, the strategy discussion or initial evaluation with the Police should take into account that teachers and other school/college staff are entitled to use reasonable force to control or restrain children in certain circumstances, including dealing with disruptive behaviour.

4.8 The DSL should inform the accused person about the allegation as soon as possible after consulting with the LADO. The DSL should provide the accused person with as much information as possible. However the DSL should not do this if a strategy decision is needed, or the Police or children's social services need to be involved. The DSL must wait until those agencies have agreed what information can be disclosed to the accused.

5. Duties of the Employer

5.1 The Trust Board and Local Governing Bodies of Harbourside Learning Partnership recognise that it has a duty of care to employees and recognises that any allegation of abuse made against a teacher or other member of staff or volunteer needs to be dealt with 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 to of the allegation.

1. Allegations made against a member of staff other than the Headteacher should be referred to the Headteacher/DSL as well as the Local Governing Body. The CEO should be notified and will be available to offer support and guidance. Should the LADO and external agencies indicate concern it may be appropriate for the management of the allegation to be escalated to the CEO to take forward.
2. Allegations made against the Headteacher or Central Team will be referred to the CEO and Trust Board and the Chair of Governors of the relevant school will be made aware.
3. Allegations made against the CEO will be referred to the Chair of Trustees.

5.2 Harbourside Learning Partnership's schools will provide effective support for anyone facing an allegation and provide the employee with a named contact should they be suspended.

5.3 Employers should act in such a way to minimise the stress caused by the allegation process. It is the duty of Harbourside Learning Partnership to support the individual throughout this process. The individual should be advised to contact their Trade Union representative if they have one and/or a colleague for support. Access to welfare counselling or medical advice should be provided.

5.4 Allegations against a teacher or other member of staff who is no longer employed at Harbourside Learning Partnership will be referred to the Police including any historical allegations of abuse.

5.5 Personal data and sensitive personal data relating to staff or former staff involved in abuse allegation cases will be managed with a constant awareness of data protection in a confidential and secure manner. Data will be viewed only by necessary and qualified persons and will not be copied, duplicated or transferred unless absolutely necessary. Concerns regarding how data is managed should be reported to the Data Protection Officer/Manager.

5.6 If there is Police or Children's Social Care Services involvement the Employer, Harbourside Learning Partnership, initially through the relevant Headteacher, should ask the Police and Children's Social Care Services to obtain consent from all the individuals involved to share the statements and evidence as the case proceeds for use in the Harbourside Learning Partnership disciplinary process.

5.7 Consent forms a key part of the *General Data Protection Regulation* and Harbourside Learning Partnership will ensure that any consent gathered by Harbourside Learning Partnership is stored in a clear auditable manner. The request for consent will be intelligible, easily accessible, in plain language and with the purpose for the data processing stated and evident. It will be as simple to withdraw consent as it was to give it.

6 Duties of the Designated Safeguarding Lead

6.1 The DSL should liaise with the local authority and work with other agencies in line with [Working Together to Safeguard Children](#). The DSL may also be referred to as the Case Manager once an allegation has been passed to the Local Authority Designated Officer (LADO) at the local authority. In this policy we continue to use the term DSL.

6.2 A detailed description of the role of the DSL can be found in the Harbourside Learning Partnership's **Safeguarding and Child Protection Policy and Procedures**.

7 Duties of the Local Authority Designated Officer

7.1 The LADO has overall responsibility for:

- Overseeing the procedures for dealing with all allegations;
- Resolving any inter-agency issues; and for
- Liaison with the Local Safeguarding Children Board (LSCB)

7.2 The LADO will provide advice and guidance to the DSL and will also:

- Liaise with the Police and other agencies;
- Monitor the progress of the case, to ensure a consistent, fair, thorough and speedy process;

- Review the case as agreed with Harbourside Learning Partnership and the DSL at regular intervals depending on the complexity of the case.
- In all cases involving allegations against a member of staff, if the allegation is about the welfare of a child (ie: a child within the school or any other child such as another child in the community or the staff members family), children's Social Care should be contacted directly.

8 Timescales

8.1 Harbourside Learning Partnership will try to resolve cases as quickly as possible and will strive to instigate a fair and thorough investigation. The time taken to investigate and resolve individual cases will vary depending on; the nature, seriousness and complexity of the allegation.

8.2 The Data Protection Officer/Manager will ensure that high standards of data security and confidentiality are maintained at all times during the abuse allegation investigations and during evidence handling and sourcing.

8.3 Where it is clear immediately that the allegation is unsubstantiated or malicious, these cases should be resolved within one week.

8.4 Where the allegation does not involve a possible criminal offence and the matter is to be dealt with internally by either the Trust Board or the Local Governing Board according to whom the allegation originally related to (see paragraph xxx), then appropriate action should be taken within three working days if no formal disciplinary action is required. If a disciplinary hearing is required and no further investigation is needed, the hearing should be held within 15 working days.

8.5 If at any point there are concerns regarding child protection then the DSL should discuss these with the LADO.

9 The Child's Wishes

9.1 Harbourside Learning Partnership will ensure the child's wishes and feelings are taken into account when determining what action to take and what services to provide to protect individual children. There should be systems in place for children to express their views and give feedback. Staff members **will not** agree confidentiality but always acts in the best interests of the child.

9.2 Harbourside Learning Partnership acknowledges that in the course of their duty of care it may be necessary to refer or offer additional welfare support to pupils, for example through digital or face to face support.

9.3 Under the *General Data Protection Regulation 2016*, parental consent is required to process the data of children under the age of 16 online where the processing, in an information services context, is reliant on consent.

9.4 Consent is not required in the context of preventative or counselling services offered directly to a child. Harbourside Learning Partnership will ensure that communications with a child on welfare topics are clear and easy to understand regarding consent to care and processing of information.

10 Supporting Parents/Carers

10.1 Harbourside Learning Partnership and the DSL recognise that parents/carers of a child or children involved should be told about the allegation as soon as possible if they do not already know about it and kept informed throughout the case. However, the DSL should not do this if a strategy decision is needed, or the Police or children's social services need to be involved. The DSL must wait until those agencies have agreed what information can be disclosed to the accused.

10.2 Parents/Carers should also be kept informed of any disciplinary process where a criminal prosecution is not sought or unlikely to proceed to prosecution. The deliberations and reasoning behind reaching a decision should not be disclosed but the parents/carers should be informed of the outcome of the disciplinary hearing in confidence.

10.3 Parents/Carers should be made aware of the requirement to maintain confidentiality about any allegations whilst investigations are ongoing as set out in [section 141F of the Education Act 2002 \(para 125\)](#).

10.4 Children's social services or the Police should consider what support the child/children may need if the child may have suffered significant harm or where there may be a criminal prosecution.

11 Supporting the Employee

11.1 The DSL should appoint a named representative to keep the accused informed of the progress of the case. Where a member of staff is suspended it is imperative that not only is the accused person made aware of the progress of the case but also kept informed of current work-related issues.

11.2 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.

12 Confidentiality

12.1 Harbourside Learning Partnership will make every effort to maintain confidentiality and protect against unwanted publicity during the investigation of the allegation. Personal data and sensitive personal data relating to staff involved in abuse allegation cases will be managed with a constant awareness of data protection in a confidential and secure manner.

12.2 *The Education Act 2002* amended 01 October 2012 introduced reporting restrictions (section 13) which prevents 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 or from any school within Harbourside Learning Partnership.

12.3 The term **publication** includes ‘any speech, writing, relevant programme or other communication in whatever form, addressed to the public at large or any section of the public.’ Relevant programme means a programme included in a programme service, within the meaning of the *Broadcasting Act 1990*.

12.4 Parents/Carers who publish details of the allegation on a social networking site for example, would be in breach of the reporting restrictions if the publication could lead to the identification of the teacher by members of the public.

12.5 The restrictions apply up until 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.

12.6 The reporting restrictions will cease to apply if the accused person waives their right to anonymity by going public themselves or by giving written consent for another to do so. At no point should the name of the child/children be brought into the public arena by either the school/academy/parent or the accused unless ordered by the Court e.g. if a Judge lifts restrictions in response to a request to do so.

12.7 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. However, in exceptional circumstances, for example an appeal to trace a suspect, the Police can apply to the Magistrates Court to request that reporting restrictions are lifted.

12.8 The DSL should take advice from the LADO, Police and Children’s Social Care Services to determine:

- Who needs to know and what information can be shared;
- If any information can be reasonably given to the wider community to reduce speculation; and

- How to manage press interest, speculation, leaks and gossip.

13 Suspension

13.1 Suspension should not be an automatic response to an allegation of abuse and all other options should be considered. In some rare cases it may be determined that the possible risk of harm to children posed by the accused person may be such as to result in considering suspension until the case is resolved. Alternatively it may be that the person remaining in the work place could impact the investigation. In such cases, this will be discussed with the CEO. The LADO will also be consulted.

13.2 If the DSL is concerned about the welfare of other children in the community or the teacher's family, those concerns should be reported to the LADO and/or the Police.

13.3 In cases where Harbourside Learning Partnership is made aware that the Secretary of State has made an interim prohibition order in respect of an individual at Harbourside Learning Partnership then the accused person must be immediately suspended pending the findings of the Teaching Regulation Agency (TRA)'s investigation.

13.4 In cases where the alleged is to be suspended, written confirmation will be given within one working day, giving as much detail as possible for the reasons for the suspension. A named contact will also be given within the letter together with their contact details.

13.5 The power to suspend a member of staff is vested in the Local Governing Body, taking advice from the Central HR services or Trust Board in the case of an allegation against a Headteacher or the Central Team who will heed the advice of the Police and Children's Social Care Services on whether they think the accused should be suspended. Police involvement does not make it mandatory to suspend a member of staff; this decision should be taken on a case-by-case basis having undertaken a risk assessment.

14 Alternatives to Suspension

14.1 There are many cases where an investigation can be resolved quickly which would not require the need for suspension and Harbourside Learning Partnership and the DSL should do all that is possible to avoid suspension as long as, the LADO, Police and Children's Social Care Services do not object to the accused working during the investigation.

14.2 Based on assessment of risk, the following alternatives should be considered by the DSL before suspending a member of staff:

- Redeployment within Harbourside Learning Partnership 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 in Harbourside Learning Partnership so the individual does not have unsupervised access to children;
- Moving the child or children to classes where they will not come into contact with the member of staff, making it clear that this is not a punishment and parents have been consulted; or
- Temporarily redeploying the member of staff to another role in a different location, for example to an alternative school or college or work within the academy trust or from home.

15 Resignation, Settlement Agreements and Referrals to DBS/TRA

15.1 Should the accused person resign or cease to provide their services to Harbourside Learning Partnership this will not prevent an allegation being duly investigated and procedures followed in accordance with this policy.

15.2 If the accused person resigns or their services cease to be used and they are being investigated or have been found culpable then Harbourside Learning Partnership **will not** enter into a settlement agreement.

15.3 Harbourside Learning Partnership recognises that to enter into an agreement preventing them from making a referral to the DBS and TRA would be a breach of their legal duty and could result in a criminal offence being committed.

15.4 Harbourside Learning Partnership 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
- There is reason to believe that the 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.

15.5 *For a list of offences see [Safeguarding Vulnerable Groups Act 2006 \(Controlled Activity and Prescribed Criteria\) Regulations 2012](#).

15.6 Harbourside Learning Partnership will refer to the DBS and TRA as soon as possible after resignation or removal of the individual. The DBS will decide whether to bar the individual.

15.7 Harbourside Learning Partnership will make every effort to reach a conclusion in all cases of allegations of abuse against staff including any in which the person accused refuses to cooperate with the process.

15.8 For information regarding how to refer cases of teacher misconduct including who can make a referral and in what circumstances please see the link below:

<https://www.gov.uk/guidance/teacher-misconduct-referring-a-case>

16 Action to be Taken Following a Criminal Investigation of Prosecution

16.1 The Police should inform the Trust Board of Harbourside Learning Partnership and the LADO immediately when;

- A criminal investigation and any subsequent trial is complete;
- If it is decided to close and investigation without charge; or
- Not to continue to prosecute the case after the accused has been charged.

16.2 The LADO should then discuss with the DSL using the information provided by the Police and/or Children's Social Care Services, whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. Harbourside Learning Partnership and the DSL will consider the different standards of proof required in disciplinary and criminal hearings.

16.3 Harbourside Learning Partnership recognise that 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. Harbourside Learning Partnership will also refer the matter to the Teaching Regulation Agency (TRA) if they have not already done so.

17 Action to be Taken in Respect of Unfounded, False or Malicious Allegations

17.1 On conclusion of the case it is decided that the person who may have been suspended can return to work, the DSL will offer help and support to return to work after this stressful experience. This may necessitate a phased return to work and/or the provision of a mentor to provide assistance in the short term. The DSL will consider how contact with the child or children who made the allegation can best be managed if they are still a pupil at Harbourside Learning Partnership.

17.2 If the allegation is found to be unsubstantiated or malicious the LADO 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.

17.3 If an allegation is shown to be deliberately invented or malicious, the Headteacher and/or the Governing Body should consider whether any disciplinary action against the child who made it should be taken, 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.

18 References and Record Keeping

18.1 Where an allegation was proven to be false, unsubstantiated or malicious it should not be included in employer references. A history of allegations lodged against the individual which have all been found to be false, unsubstantiated or malicious should also not be included in any reference.

18.2 Harbourside Learning Partnership will ensure that all details of allegations, after an investigation has found them to have been malicious in nature will be removed from personnel records.

18.3 For all other allegations a clear and detailed summary will be kept which will include (as a minimum):

- Details of the allegation;
- Details of how the allegation was investigated;
- How decisions were reached; and
- Any actions taken.

18.4 A copy will be kept on the confidential personnel file of the accused and a copy provided to the accused person.

18.5 The record will be retained by Harbourside Learning Partnership until the accused has reached normal pension age or for a period of 10 years from the date of the allegation, whichever is longer.

18.6 Harbourside Learning Partnership will acknowledge the guidance on employment records published by the Information Commissioner – Guidance on Employment Records in its [Employment Practices Code](#) and [Supplementary Guidance](#) and [Keeping Children Safe in Education](#)

18.7 Children are classed as vulnerable individuals under data protection law. Data disclosed and processed on any safeguarding topic will be handled with the utmost

sensitivity and confidentiality and in accordance with the terms of the *General Data Protection Regulation*.

18.8 Harbourside Learning Partnership will ensure that data is held for a specified period in a secure manner before being securely disposed of. Given the extreme sensitivity of the data pertaining to allegations, all relevant sources, both electronic and physical, will be held securely and in accordance with Harbourside Learning Partnership's Data Protection Policy and the General Data Protection Regulation. Only relevant individuals will be permitted to access the data. The importance of diligent data security is stressed to staff and they will receive appropriate training to ensure the risk of breach is minimised.

18.9 Harbourside Learning Partnership have every confidence in the integrity of the data protection measures in place on site, but acknowledge that the loss of sensitive child data could constitute a serious breach which could place the wellbeing of a pupil at risk. Should a breach occur this must be reported promptly to the Data Protection Officer/Manager, who will undertake an assessment of the risks to the rights and freedoms of individuals and disclose to the subject and supervisory authority if required.

19 Monitoring and Review

19.1 At the conclusion of any case in which an allegation is substantiated, the LADO and the DSL and the Headteacher/CEO will review the case and will determine:

- Whether any improvements could be made to Harbourside Learning Partnership policy and procedures to prevent similar occurrences in the future;
- Can any lessons be learnt from this case?

19.2 If the case was found to be false, unsubstantiated or malicious, the DSL and the Headteacher/CEO will review the case and determine:

- If a member of staff was suspended and subsequently reinstated, was the suspension justified?
- Does any other policy (including for example pupil discipline and safeguarding) need to be reviewed in light of this case?

19.3 The Trust Board will review this policy annually and assess its implementation and effectiveness. The policy will be promoted and implemented throughout the Trust.