



Definitions and Thresholds for Managing Allegations Against Education Staff

JANUARY 2004

Guidance Produced by:
**The National Network
of Investigation & Referral
Support Co-ordinators.**

Established by:

department for
education and skills
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1. Purpose of this document

To assist LEA Lead Officers, Headteachers, Governors and Service Managers, interpret the current law and guidance and help ensure that all complaints and allegations against staff, where there is a child welfare concern, are dealt with appropriately. In particular, this guidance seeks to help differentiate between those allegations and concerns that require referral to Social Services and/or Police, and those more properly dealt with through standard complaint or disciplinary procedures.

This document is intended to complement the following National Employers Organisation for School Teachers (NEOST) guidance documents:

- NEOST Guidance on Conduct for Teachers, Education Staff and Volunteers
- Joint NEOST/Teacher Union Guidance on Preventing Abuse of Trust for Teachers Education Staff and Volunteers
- Joint NEOST/Teacher Union Guidance on Education Staff and Child Protection: Staff Facing an Allegation of Abuse

2. General principles

The welfare principle '*The Welfare of the Child is Paramount... Children Act 1989 S1 (1)*' must be upheld in all cases. The child must be listened to and any concerns taken seriously. Headteachers/Managers also have a continuing duty of care to any member of staff who becomes the subject of an allegation. They should ensure that staff in this position are treated fairly and offered appropriate professional support.

3. Definitions

The relevant legislation and guidance, such as the Children Act 1989 and 'Working Together to Safeguard Children' (DOH, et al, 1999), provide a number of the definitions that are used to describe child abuse in its different forms. These include the four categories of abuse i.e. physical, sexual, emotional and neglect; the definition of harm, health, development and ill treatment and also significant harm. A list of these definitions, together with the definition of assault, can be found in appendix A.

4. How concerns may come to notice

Concerns about the behaviour of a member of staff toward a pupil may be made in the form of a complaint or allegation. These terms are often used interchangeably and it is important, therefore, to consider the details of the alleged incident and not the label attached to it. Any complaint with a child protection element should be responded to as a child protection allegation in the first instance.

Concerns may be raised in a number of ways e.g:

- Direct disclosure by the child or young person
- Indirect disclosure e.g. through written/art work or through friends
- Complaint from a parent/carer to:

- Headteacher/Manager/LEA
 - Social Services
 - Police
 - Reports by other colleagues or agencies
 - Anonymously
- (See also Paragraph 6 of NEOST's Staff Facing an Allegation of Abuse)

5. Context

Where it is decided that a child protection or disciplinary investigation should take place, the context in which an incident is alleged to have occurred, may provide important information for those conducting the investigation. The collation of such information however, should not delay a child protection referral being made, nor jeopardise any subsequent investigation. Advice can be sought from the LEA Lead Officer on these matters.

The context of an alleged incident might include:

- normal duties (e.g. pupil or teacher away from expected location)
- environment (e.g. special needs school, field trip)
- standards applied to the member of staff, with regard to the activity and circumstances in which the alleged incident occurred (e.g. job description, code of conduct, local practice guidance etc)
- conduct of the member of staff (e.g. previous concerns, present conduct, disciplinary action)
- conduct of the child or young person (e.g. both characteristic and uncharacteristic behaviour, previous allegations made)
- child and/or parents view of the incident

Where previous allegations have been made, serious caution must be applied. This may indicate an ongoing concern about that particular child or member of staff that needs to be addressed.

6. Type of allegation

6.1. Physical Abuse

Evidence shows that allegations of physical abuse are more common than those of a sexual nature. They often arise from incidents involving physical intervention or classroom management, when the actions of members of staff are perceived as an excessive use of force, an assault, or both.

All schools and educational establishments should ensure that they have robust recording systems to log any incidents that have resulted in the use of restraint. All schools should have physical intervention policies which should be in line with LEA and DfES guidance.

6.2. Sexual Abuse

Allegations of sexual abuse can be extremely emotive and therefore difficult to deal with. They can range from sexual assault to allegations of inappropriate touching, language or behaviour, which are perceived to have a sexual motive. All members of staff have a responsibility toward the children in their establishment and a majority of staff are placed in a position of trust. They should be aware of any safe practice guidelines that are in place and be clear as to what constitutes inappropriate contact with pupils. Clear codes of conduct should be adhered to.

6.3. Emotional Abuse and Neglect

Issues of emotional abuse and neglect are much more complex and are more likely to come to light via a school's complaint procedures. They do occur in schools, both in acts of commission and omission e.g. bullying comments, racist remarks (emotional abuse) or failing to address this in others (neglect). Where the alleged behaviour is deemed to cause significant harm on the health or emotional well being of the child, a child protection referral should be made.

7. Examples of actions that may be interpreted as abusive

Ill-treatment is an implicit element in all forms of abuse. It provides a measure, within the context of significant harm and alleged crime, for establishing a threshold for referral. Ill-treatment by a professional might include:

Physical Abuse

- Any form of physical assault (including attempts) e.g:
 - Punching
 - Kicking
 - Pushing
 - Smacking
 - Slapping
 - Shaking
 - Throwing a missile at a pupil (e.g. chalk, board rubber etc)

Sexual Abuse

- Any form of sexual assault (includes attempts)
- Abuse of a position of trust
- Possession of indecent and pseudo indecent photographs of children (includes computer images)
- Showing indecent or pornographic material to children
- Inappropriate touching, language, or behaviour toward any child or pupil for sexual purposes
- Inappropriate use of text messaging, e-mail or other IT toward any child or pupil for sexual purposes

Emotional Abuse and Neglect

- Racial comments or behaviour, or failing to address these in others
- Homophobic comments or behaviour, or failing to address these in others
- Bullying pupils, or failing to address this in others
- Persistent sarcasm
- Belittling pupils e.g. persistently placing a child in a corner or corridor
- Creating a climate of fear in the classroom
- Damaging a pupil's self esteem through persistent lack of warmth and positive regard
- Inappropriate punishment e.g. placing a child in a cupboard
- Failing to protect a child from physical harm or danger (e.g. school trips)
- Failing to ensure access to appropriate medical care or treatment (e.g. where a pupil sustains an injury)

The above examples are not exhaustive and only serve as a guide. Many of these behaviours do constitute a criminal offence some do not and some may not reach a threshold of significant harm, but they all constitute professional misconduct.

8. Examples of actions that are non-abusive¹

- Applying restraint consistent with legislation and guidance (S.550A Education Act 1996 and Circular 10/98)
- Removing, with reasonable force, potentially dangerous items from a pupil's possession, or a pupil from a dangerous location
- Shepherding pupils (e.g. hand on back/shoulder)
- Comforting (e.g. hand on arm/shoulder/back)
- Securing attention by tapping pupil's shoulder

Staff should be aware, however, that any physical contact with pupils could be open to misinterpretation. Perceptions and language can present very different views of the same incident. Tapping a child could be interpreted as an assault, particularly where there has been earlier disagreement between the child and the member of staff concerned. Some methods of comforting a child could be viewed as an unwanted sexual advance. Other than circumstances which are in accordance with an agreed physical intervention policy, physical contact should be age appropriate, with the child's permission, and limited to the needs of the child at the time.

9. Examples of actions that are both abusive and non-abusive

The following are examples of actions, albeit not overtly abusive, that could be interpreted as a member of staff 'grooming' a child for sexual purposes:

- Inviting pupils to their homes
- Giving pupils gifts
- Offering pupils lifts outside normal duties
- Singling individual pupils out for special attention
- Seeing pupils socially

¹ Further advice is set out in NEOST Guidance on Conduct 2002.

The frequency, nature and degree etc of such behaviour may justify the need for further investigation under child protection or discipline procedures.

10. Thresholds for referral

This advice builds upon the guidance contained in paragraph 7 of NEOST's Staff facing Allegations of Abuse

10.1. Significant Harm

Where a complaint or allegation has been made against a member of staff and the child is considered to be suffering or is likely to suffer significant harm a referral must be made to Social Services.

The definition of significant harm is not prescriptive. Its interpretation will depend largely on professional judgement, based on the known facts. It can include inappropriate touching, an assault, or a series of compounding events e.g. bullying. Other factors to be considered include the age and vulnerability of the child, the degree of force used, the frequency of the harm, the nature of the harm in terms of ill treatment and the impact on the child's health and development.

In simple terms, if the harm or risk of harm attributable to a member of staff falls within the category of either physical, sexual or emotional abuse or neglect, a referral should be made to Social Services. It is important that advice is sought where there is any doubt as to whether the threshold of significant harm has been reached. 'Working Together' states 'Often, it is only when information from a number of sources has been shared and is then put together that it becomes clear that a child is at risk of or is suffering harm'. Whilst in some cases the threshold for significant harm may not be met, the concern can still be addressed through internal investigation and if appropriate, disciplinary or competency routes.

10.2. Initial category of allegation

It is not necessary to make a referral to Social Services where an allegation can be shown beyond doubt to be demonstrably false. Consideration should, however, be given to the reasons for the allegation and whether a child in need referral may be appropriate. (See 11 below)

In their initial consultation, Heads and LEA Lead Officers will obviously give thought to the likelihood of whether an alleged incident actually took place. Decisions on referral, however, should not be based on assumptions/prejudgements about the truth of the allegation and no attempt should be made to investigate an allegation in order to determine the truth. The chart at Appendix B provides guidance to assist Heads and LEA Lead Officers in this early process.

10.3. Trivial

Guidance states that allegations of a trivial nature do not have to result in a child protection referral and common sense would support this. What makes an allegation

trivial, however, can be one of individual interpretation and care should therefore be taken in this respect. What may seem trivial to a Head Teacher or LEA Lead Officer may be significant to the child involved or the person making the allegation. For example, an alleged push may seem trivial but may have frightened the child on the receiving end. An allegation of a push, however trivial, may also constitute an allegation of assault (see Appendix A).

10.4. Criminal Offence²

Complaints against staff may constitute an allegation of a criminal offence. For example, complaints about excessive force used in restraint incidents and the use of force to maintain discipline, may contain the elements that could give rise to an allegation of assault (see Appendix A).

Where a complaint or allegation against a member of staff indicates that a criminal offence has been committed or is suspected of having been committed, a referral should be made to Social Services and/or Police. It is not necessary to consider whether the threshold of significant harm has been reached. It is important for advice to be sought if there is any doubt.

10.5. Human Rights

Schools and other Educational Establishments have a pastoral duty of care to the pupils they are entrusted with. A failure to refer a significant concern about a child could be a breach of that child's human rights as defined in Article 3 of the European Convention on Human Rights i.e. protection from inhuman or degrading treatment.

11. Dealing with demonstrably false, displaced or potentially malicious allegations

Complaints and allegations against members of staff should always be viewed objectively. The circumstances leading up to the complaint can often be complicated and the outcome far from certain.

Words such as false, unfounded, unsubstantiated and malicious are often used in the same context when describing an allegation. The meanings are very different and it is important for staff to understand the distinction between them and use them correctly.

The term false can be broken down into two categories:

- Malicious This implies a deliberate act to deceive. A malicious allegation may be made by a pupil following an altercation with a teacher or a parent who is in dispute with a school. For an allegation to be classified as malicious, it will be necessary to have evidence, which proves this intention.

² See also paragraph 7 of Joint NEOST/Teacher Union Guidance "Staff Facing an Allegation of Abuse" 2002.

- **Unfounded** This indicates 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. For an allegation to be classified as unfounded, it will be necessary to have evidence to disprove the allegation.

Children and young people may make false allegations in an attempt to draw attention to abuse emanating from another source within their family or community. This is known as displacement. A parent may make a false allegation in an attempt to evade responsibility for an injury or incident in which they were involved. A colleague may make a false allegation in an attempt to discredit a member of staff.

An unsubstantiated allegation is not the same as a false allegation. It simply means that there is insufficient identifiable evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

The perception that an allegation is false should not prevent a child protection referral being made. It should be clear from the outset that an allegation is demonstrably false before a decision is made not to refer the allegation (see Appendix B). Even then, consideration should be given to making a referral to Social Services, with the parent or guardian's permission, if it is thought that the reason for the allegation points to a child in need.

The justification for any decision about referring, or not referring an allegation, must be recorded.

12. Process (see Appendix C)

12.1. Initial Action

When an allegation is received it is important to be clear about what is being said. It must be noted, however, that the Headteacher/Manager **should not** investigate the incident by interviewing either those directly involved or any witnesses. Interviews undertaken by untrained staff are likely to jeopardise any subsequent criminal/discipline investigation and may lead to unjust outcomes for the child or the accused member of staff.

The Headteacher/Manager should simply establish:

- That an allegation has been made
- The general nature of the allegation
- When and where the incident is alleged to have occurred
- Who was involved
- Any other persons present

12.2. Referral³

Allegations against education staff should be managed in accordance with DfES guidance. This advises Headteachers/Managers to consult the LEA Lead Officer.

³ See also paragraph 8 of Joint NEOST/Teacher Union Guidance "Staff Facing an Allegation of Abuse" 2002.

The involvement of the LEA Lead Officer should ensure that such cases are dealt with impartially and help avoid any possible accusation of collusion.

Consultation between the Headteacher, LEA Lead Officer and the relevant Human Resources Advisor should take place at the earliest opportunity. The Headteacher/Manager and the LEA Lead Officer should then decide whether the alleged incident should be referred to:

- Social Services/Police for potential child protection and/or criminal investigation.
- Human Resources – The Lead Officer will need to take advice regarding the employee elements inherent in any allegation.

The decisions with their reasoning should be clearly recorded. Those involved in the related discussions must also be identified in this documentation.

Where the allegation is against a headteacher, the nominated Governor becomes the person responsible for ensuring the matter is taken forward as above. In the case of a service manager, the responsibility resides with the relevant Assistant Director or other Senior Officer.

12.3. Multi-agency involvement

In most cases, particularly where the complaint is made directly to Police or Social Services, it is likely that the investigation process will commence with a multi-agency strategy discussion. It is important that the LEA Lead Officer, Human Resources and a representative of the school/establishment are involved in this discussion. Agreement will be reached at that stage as to whether a full child protection investigation is necessary.

12.4. Training

All staff working with children should have an appropriate knowledge and understanding of the indicators and categories of abuse and child protection procedures. Those involved with managing or advising others regarding child protection allegations against staff should also have regard to the concept of significant harm and a basic understanding of what may constitute a criminal offence.

12.5. Support

The process of dealing with an allegation against staff can be daunting for the child involved. Where the allegation is unfounded or even false there may also be underlying reasons for the allegation being made. It is important that the child's needs are identified and the appropriate support is obtained.

An allegation can be traumatic for the accused member of staff too, particularly when the allegation is false. Employers have a duty of care to their employees and should ensure that appropriate support is offered. The member of staff should also be advised to seek the advice of their union or professional association.

Concerns are sometimes raised by colleagues who have witnessed behaviour that they consider in good faith to be abusive or inappropriate. It is important to enable staff to disclose their views without fear of retribution, even if the concerns are subsequently unsubstantiated. Such staff should be supported in accordance with the LEA or school Whistle Blowing support policy.

13. Further Guidance

Further guidance on dealing with allegations against staff can be found in:

- Protecting Children from Abuse: The Role of the Education Service - DfEE Circular 10/95
- Joint NEOST/Teacher Union Guidance- Staff Facing an Allegation of Abuse 2002
- Procedures for Managing Allegations of Abuse - DfES/NEOST/Teacher Union Guidance 2002
- Thresholds for and Alternatives to Suspension - IRSC Guidance 2004
- Managing the Aftermath of Allegations - IRSC Guidance 2004

14. Additional References and Bibliography

- Working Together to Safeguard Children (DOH et al) 1999
- The Children Act 1989
- The Education Act 1996
- The School Standards and Framework Act 1998
- The use of force to Control or Restrain Pupils – DfEE Circular 10/98
- The Human Rights Act 1988
- NEOST Guidance on Conduct for Teachers, Education Staff and Volunteers 2002
- Joint NEOST/Teacher Union Guidance on Preventing Abuse of Trust for Teachers Education Staff and Volunteers 2002
- Joint NEOST/Teacher Union Guidance on Education Staff and Child Protection: Staff Facing an Allegation of Abuse 2002

“Working Together” provides clear definitions of the four categories of abuse:

- Physical Abuse - May involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child
- Emotional Abuse - The persistent emotional ill treatment of a child such as to cause severe and persistent adverse effects on the child’s emotional development.....
- Sexual Abuse - Involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative or non penetrative acts.....
- Neglect - The persistent failure to meet a child’s basic physical and psychological needs, likely to result in the serious impairment of the child’s health or development....

Under the Children Act 1989 Sect.31 (9):

- Harm - means ill treatment or the impairment of health or development;
- Development - means physical, intellectual, emotional, social or behavioural development;
- Health - means physical or mental health
- Ill treatment - includes sexual abuse and forms of ill treatment which are not physical

Significant Harm

“There are no absolute criteria on which to rely when judging what constitutes significant harm. Consideration of the severity of ill treatment may include the degree and extent of physical harm, the duration and frequency of abuse and neglect and the extent of premeditation, degree of threat and coercion, ...” (*Working together to Safeguard Children, DOH 1999*)

Assault

Apart from trivial allegations (see para 10.3), any allegation of assault on a pupil made against a member of staff should result in a child protection referral, even though it may not meet the threshold of significant harm. It is therefore important to understand what constitutes an assault in criminal law.

Assault and battery have distinct legal meanings and both are offences. They are often referred to simply as “assault” or “common assault”.

For a person to be guilty of assault, it is not necessary for any physical contact to be made. The person must, however:

- Commit an act (both oral or written) which causes fear of immediate unlawful violence (guilty act); and
- Intend to cause fear of immediate unlawful violence, or be reckless as to that consequence (guilty mind)

A person is guilty of battery if he/she intentionally or recklessly applies unlawful force (a small degree of physical contact will be enough) to another person. The force can be applied directly or indirectly e.g. a punch aimed at a woman that doesn't hit her but causes her to drop and injure the child she is carrying, is assault against the woman and battery against the child.

It is lawful for any person to use reasonable force in self defence, or to protect a pupil who is at immediate risk of injury or about to inflict injury on someone else (DfEE Circular 10/98). It is also lawful for teachers and other authorised staff, to use reasonable force to prevent a pupil from committing a criminal offence, injuring themselves or others, causing damage to property or engaging in behaviour prejudicial to maintaining good order and discipline (S.550A Education Act 1996). Corporal punishment is however, outlawed by the School Standards and Framework Act 1998.

Indecent Assault

An indecent assault is simply an assault committed in circumstances of indecency.

ALLEGATIONS AGAINST STAFF
SCHOOL THRESHOLD FOR CHILD PROTECTION REFERRAL

Introductory notes:

- (i) The following table has been produced to assist decision-making when considering whether to make a child protection referral. This should be used in conjunction with DfES standards, ACPC procedures and the attached guidance. Its purpose is to ensure that wherever possible, the initial category of the allegation is ascribed on the basis of the evidence presented, rather than upon assumption or preconception.
- (ii) The decision-making process should not preclude a 'child in need' referral at any stage.
- (iii) All concerns raised about staff should include consideration of their conduct, whether in relation to any necessary disciplinary action and/or with regard to reducing their vulnerability to further allegations. This may involve an action plan for other staff too.

CATEGORY	DEFINITION	EXAMPLES	ACTION	SAFEGUARDS
1. Apparent Corroboration	Where an allegation or concern is accompanied by actual or circumstantial evidence.	<p>A child may have a visible injury.</p> <p>The incident may have been witnessed.</p> <p>The member of staff may behave in a way that is consistent with the allegation.</p>	<p>A Child Protection referral must be made to Social Services or the Police. Local ACPC Procedures must be followed.</p> <p>The LEA Lead Officer should make a referral in accordance with local LEA/ACPC child protection procedures.</p>	<p>The referral should be confirmed in writing</p> <p>The LEA Lead Officer should keep a copy of the referral.</p>

CATEGORY	DEFINITION	EXAMPLES	ACTION	SAFEGUARDS
2. Possible	Where there are indications that an abusive incident might have taken place, or little evidence to disprove a child's allegations.	Where a child's allegations might be supported by other information, or where it is a matter of one word against another.	A Child Protection referral must be made to Social Services or the Police. Local ACPC procedures must be followed. The LEA Lead Officer must also be informed of the case and the action taken.	The referral to Social Services or Police must be followed in writing. A copy of the referral must be sent to the LEA Lead Officer.
3. Unlikely	The alleged incident most probably did not take place.	Where circumstantial evidence appears incompatible with the allegation.	Only clarification of the specific allegation or concern should be sought. No attempt should be made to investigate the matter at this stage.	The school's knowledge of both the child and member of staff concerned will be invaluable – however , the Lead Officer's view will contribute further objectivity and help to secure consistency and appropriateness of response.
4. Demonstrably false	It is known without a doubt that an allegation is untrue. This position requires strong evidence and must not be based on preconceptions about the child or member of staff concerned.	The alleged perpetrator was known not to be anywhere in the vicinity and the child is not confused in terms of time, place or person.	Internal enquiries can be undertaken by the school. The child's motives or misunderstandings should be addressed – involving those with parental responsibility.	The LEA Lead Officer for Child Protection must receive written notification of the allegation, the evidence and how the matter was resolved. This allows for external monitoring and further intervention if appropriate. Consideration should always be given to the possibility that the child may be displacing abuse experienced elsewhere.

PROCEDURES FOR MANAGING ALLEGATIONS / CONCERNS AGAINST EDUCATION STAFF

