

Springwood Infant and Junior School Federation

TOGETHER WE LEARN, TOGETHER WE GROW



Dealing with Allegations of a Child Protection Nature Against the Headteacher

Statutory Policy

Approved By: **Governing Body**
Effective Date: **September 2024**
Review By: **September 2025**

**Stay Safe,
Treat Others How You Wish to be Treated,
Try Your Best and be Proud**

Dealing with allegations of a child protection nature against the Headteacher

Concerns or allegations of a child protection nature made against the Headteacher should be dealt with by a nominated member of the Governing Body. This will usually be the Chair of Governors. As Chair of Governors, or the nominated Governor for dealing with an allegation about the Headteacher, you will have a key role to play should an allegation be made to you.

If an allegation or concern is raised with you, from any source, named or anonymous, then you must take action with that information if that allegation or concern is that the Headteacher has:

- behaved in a way that has harmed a child, or may have harmed a child; or
- 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;
- behaved or may have behaved in a way that indicates they may not be suitable to work with children.

If you are told about an allegation or concern and you are not the Chair of Governors or nominated Governor, you must tell the Chair of Governors or nominated Governor immediately.

Whilst this guidance is written for all schools, governors of non-Hampshire schools must have due regard to their own authority's child protection procedures and advice provided by their Local Authority Designated Officer (LADO).

Contents

- 1. Flowchart: first steps and immediate actions 4
- 2. Conducting preliminary enquiries..... 5
- 3. Child protection investigations 5
- 4. Informing the Headteacher of the allegation..... 5
- 5. Timescales 6
- 6. Asking the Headteacher to remain at home..... 6
- 7. Support for the Headteacher..... 7
 - 7.1 Support at the point of allegation
 - 7.2 Support on conclusion of the matter and on return to work
- 8. Formal suspension 7
- 9. Arrests, charges, bail and cautions..... 8
- 10. Outcomes of child protection investigations..... 9
- 11. Headteachers who leave before the end of a child protection process 10
- 12. Termination of employment by mutual/settlement agreement..... 10
- 13. Dealing with the media 11
- 14. Conducting an internal investigation 11
 - 14.1 Key principles and role of the nominated Governor..... 12
 - 14.2 Interviewing the Headteacher and witnesses – general principles 12
 - 14.3 Interviewing the Headteacher 13
 - 14.4 Interviewing other witnesses 14
 - 14.5 Interviewing children 14
 - 14.6 Dealing with anonymity 15
 - 14.7 Refusal to be interviewed..... 15
 - 14.8 Assessing the evidence and writing the report..... 15
- 15. Retention of evidence..... 16
- 16. Dealing with unsubstantiated or malicious allegations 16
 - 16.1 Action following determination of a unsubstantiated or malicious allegation 16
 - 16.2 Appropriate support for the Headteacher..... 17
- 17. Learning lessons 17
- 18. Writing references 17
- 19. Useful contacts and links 18
- 20. Frequently Asked Questions 19
- Appendix 1 – Template Investigation Report..... 21

I. First steps and immediate actions flowchart

Ascertain Relevant Details:

1. Make an immediate and accurate record of details initially provided, including dates, times, locations, incidents and people allegedly involved, including a record of who said what to whom.
2. Ensure the person who spoke to the child, or originator of the concern (if a different person from above) has fully recorded the details provided. The child should **not** be asked to write a statement at this stage.
3. Ascertain any other background information about the child’s circumstances, any known concerns about the Headteacher, whether the Headteacher could have been at that place at that time, etc. This is a ‘double-check’ of the information, not an investigation. If you are not able to access this information, record that this is the case.
4. Do **not**, at any point, alert the Headteacher to the information that has been shared with you.



Contact the Local Authority Designated Officer (LADO):
 Contact the LADO immediately. The Hampshire LADO can be contacted on 01962 876364 (in normal office hours). Out of hours, call Hampshire Children’s Services out of hours service 0845 600 4555.



Determine How to Proceed:
 In liaison with the LADO, determine whether the allegation:

a) Requires a further preliminary investigation	<ul style="list-style-type: none"> • Contact Education Personnel Services (EPS) (023 8038 3500) • Contact the School Improvement Manager • Contact Governor Services • See guidance in section 2
b) Is to be dealt with as a child protection investigation	<ul style="list-style-type: none"> • Contact EPS (023 8038 3500) • Contact the School Improvement Manager • Contact Governor Services • See guidance in section 3
c) Is to be dealt with as an internal disciplinary matter	<ul style="list-style-type: none"> • Contact EPS (023 8038 3500) • Contact Governor Services • Follow the school’s disciplinary procedure
d) Is proven to be malicious	<ul style="list-style-type: none"> • See guidance in section 16

2. Conducting preliminary enquiries

The LADO should provide you with key information that needs to be obtained before they are able to advise on next steps. This may be to gather key statements from potential witnesses (**excluding children/pupils**), to find out further detail about the allegations that have been made, or some other preliminary enquiries. You **must** establish clearly with the LADO whether the Headteacher can be told of the allegations, or whether they should be asked for a statement at this stage. If it is a potential child protection matter, then it is unlikely they can be made aware that any issue has been raised.

In conducting preliminary enquiries, you must adhere to the following principles:

- you must not ask any leading questions of any witnesses. You should simply ask witnesses to write down what they saw or heard on x date at x time;
- you must not provide any details of the allegations that have been made;
- if asking for clarification, you need to ask openly for the individual to provide further information, or to expand on, a particular phrase in their written statement, see 14.2.

EPS can provide clear and helpful advice about conducting preliminary enquiries and will work closely with you and the LADO to assist you to obtain any information required.

3. Child protection investigations

If the LADO advises you that this is to be dealt with as a child protection investigation, you must ascertain what action you need to take. The action you may need to take, depending on the situation, could involve any or all of the following:

- contacting EPS on 023 8038 3500 **in all cases**;
- providing further information about the background of the Headteacher, including any previous known concerns, **in all cases**;
- attending a strategy group meeting of various agencies, in some cases;
- asking the Headteacher to remain away from the school, in some cases;
- formally suspending the Headteacher, in some cases.

In the majority of cases, another agency, such as the police, may be making investigations into the allegation and therefore until such time as they are complete, you are unlikely to be able to conduct any investigation yourself.

In cases involving the police, it is expected that:

- police officers will be given every assistance with their enquiries;
- confidentiality about such enquiries will be maintained in the interests of the Headteacher;
- arrangements will be made for the nominated Governor to be kept informed of the progress of police enquiries, where appropriate (in some cases this may be the School Improvement Manager for the school or Education Personnel Services on behalf of the nominated Governor);
- the nominated Governor will obtain advice from Education Personnel Services and the LADO to determine what interim action may be appropriate.

4. Informing the Headteacher of the allegation

It is instinctive and normally would be a matter of natural justice to tell the Headteacher who is the subject of an allegation that an allegation has been made against them or concern has arisen about

their behaviour. However, in child protection situations, the approach **must** be different. Telling the Headteacher prior to a formal investigation may, if the allegation is true, give that person an opportunity to make further contact with the child, or to remove or change relevant evidence.

For this reason, the timing of informing the Headteacher **must** be agreed between the relevant parties to the investigation.

5. Timescales

The DfE guidance 'Keeping Children Safe in Education' provides indicative timescales for key stages of the process. The time taken to investigate and resolve individual cases will depend on a variety of factors including the nature, seriousness and complexity of the allegation. However, it is important that allegations against Headteachers (as with all staff) are dealt with in the shortest time that is consistent with proper investigation and legally sound procedures.

On that basis, the indicative times suggested by the DfE are as follows:

- all allegations should be investigated as a priority to avoid or eradicate any delay;
- it is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months;
- for those cases where it is clear immediately that the allegation is unsubstantiated or malicious, they should be resolved within one week;
- where the allegation does not require formal disciplinary action, the nominated Governor should institute appropriate (e.g. advisory) action within **3 working days**;
- if a disciplinary hearing can be conducted without further investigation, this should be held within **15 working days**.

These timescales may be varied by agreement with EPS in specific cases where it is appropriate to do so in the interests of natural justice. It is more important to ensure that the issues are addressed fully and fairly than to try to meet timescales that may be unrealistic in specific cases.

6. Asking the Headteacher to remain at home

At the point it has been determined that you are able, and it is determined to be the appropriate action, you may be asked to meet with the Headteacher to ask them to remain away from the school site. This is not suspension; it is an informal action and requires the cooperation of the Headteacher.

Generally, this action is not taken until the relevant agency has completed their initial investigation.

You would need to:

- explain the situation, as far as you have been told that you can, to the Headteacher. This may be as brief as *“we understand from the Local Authority Designated Officer that investigations are being undertaken into your alleged conduct”*;
- tell the Headteacher that they must remain at home and not enter the school site unless they have your express permission to do so;
- tell them that this is not a formal suspension and that they will remain on full pay;
- agree when you will next contact them to update them;

- provide a copy of the leaflet '<http://documents.hants.gov.uk/mopp/information-staff-facing-allegations.do>con for staff facing allegations' from the EPS Manual of Personnel Practice , accessible from Hampshire Governor Services Intranet (under S for Safeguarding);
- confirm this in writing, using Education Personnel Services for support;
- confirm whether their email/school account should be accessed.

The period of time that the Headteacher is asked to stay at home should be fairly limited and in most cases, no more than two weeks. After this time, you are likely to be advised to make a decision as to whether to formally suspend the Headteacher or not.

7. Support for the Headteacher

7.1 Support at the point of allegation

Employers have a duty of care to their employees and as such should act to manage and minimise the stress inherent in the allegations process. Support for the individual is vital to fulfilling this duty. However, until the Headteacher is made aware of the allegation, there is no support that can be offered.

When the Headteacher is made aware of the allegation, either through the police or yourself (or other nominated representative), then there are steps that you need to take to support your Headteacher.

This includes:

- giving them the leaflet '<http://documents.hants.gov.uk/mopp/information-staff-facing-allegations.do>con for staff facing allegations' ensuring that the employee counselling service details are accurate;
- identifying a nominated person to be the contact for them in school to keep them regularly up to date with developments e.g. the Deputy Headteacher. These developments may be to do with the investigation or general developments in school;
- advising them to contact their union or professional association for advice;
- ensuring the Headteacher is aware of any employee counselling service, reiterating the contact details in the leaflet referred to above.

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. **Advice should be sought from the LADO on this point.**

7.2 Support on conclusion of the matter and on return to work

The individual needs of the Headteacher should also be reviewed at the conclusion of the case and, where applicable, a suitable support plan should be developed to assist their return to work. A Headteacher who has been subject to an allegation will require both emotional and professional support in order to enable them to re-establish their professional confidence and, where suspension has been applied, to help them re-integrate into the school community. In cases such as this, further advice on providing appropriate support to the Headteacher will be provided by EPS.

8. Formal suspension

Formal suspension means formal action has been taken to require the Headteacher to remain away from their place of work and not to undertake any of their contractual duties.

Suspension is a neutral act; it implies neither guilt nor innocence. Suspension should not be an automatic response when an allegation is reported and all options to avoid suspension should be considered prior to taking that step. Advice on suspension should be sought from Education Personnel Services. Inappropriate and unjustified suspension resulting in an individual's resignation can amount, in law, to unfair constructive dismissal.

Formally suspending the Headteacher is an act which will be stressful and potentially damaging to the individual's professional reputation and personal relationships. It is imperative that the Headteacher is supported throughout this time (see 'Support for the Headteacher').

Suspension is normally only considered in the following circumstances, although some other circumstances may arise which could lead to suspension:

- early indications are that some of the allegations are of a nature that if substantiated, could be deemed gross misconduct, and/or
- the Headteacher may interfere with the investigation if at school, and/or
- the Headteacher has refused to remain away from the school site when asked to do so, and/or
- there are grounds to believe that the Headteacher may be a health and safety risk or danger to themselves or others if they were to remain in school.

Based on an assessment of risk, the following alternatives should be considered, in accordance with the statutory guidance from the DfE (Keeping Children Safe in Education) before any suspension is imposed, including:

- redeployment within the school or college 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 the school or college 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 for the local authority or academy trust.

In reality, for a Headteacher, the opportunities to implement these options may be limited, but must still be explored.

The rationale for the decision to suspend should be recorded in conjunction with the LADO and should include why the above options are not reasonable. EPS will support the nominated Governor in this meeting and can advise them on what to say during that meeting. The rationale for suspension should be explained to the Headteacher and communicated in writing within **1 working day** of the decision.

9. Arrests, charges, bail and cautions

Arrest – A person who is under suspicion for a criminal offence may be arrested or asked to attend a police station to attend an initial police interview.

After the initial arrest and police interview, there are several potential outcomes:

- **Released from custody with no further action** which means that there is insufficient evidence to take forward into criminal proceedings;
- **Police Bail** means released pending further enquiries. This is when the police do not have sufficient evidence to charge after arrest and initial interview, but believe that there is further evidence available to be gathered. In these circumstances the individual will be released from custody for a specific period of time with a legal obligation to return to a specified police station at a specified place and time to be re-interviewed on the fresh evidence that the police have gathered during the bail period. Police bail may have bail conditions attached to it or it may be unconditional bail (see below*);
- **Reported for summons** means to be released from custody pending receipt of a summons to attend a first hearing at a magistrates' court. The case may subsequently be transferred to the crown court. The summons process, as opposed to being charged is most often used for lesser (less serious) offences.
- **Charged** - to be charged means that the police (in liaison with the Criminal Prosecution Service) believe that there is sufficient evidence to take forward a criminal prosecution and put the individual before the court. Once charged the individual may be:
 - **Released on bail** (see below); or
 - **Kept in custody** (see below).

*After charge, the individual may be released on:

- **unconditional bail**, which means that they are legally obliged to attend a court hearing at a given time and place, but there is no restriction on their liberty prior to the court hearing; or
- **conditional bail** which means that restrictions are placed on their liberty prior to the court hearing e.g. they must have no contact with witnesses.

In more serious cases the individual may be charged and **kept in custody** to go before the next available court (sometimes referred to as remanded in custody).

The police or Crown Prosecution Service can give an adult over the age of 18 a **caution** if they commit a minor crime. NB This is not to be confused with the caution used for the purpose of advising a person of their right to silence.

A person has to admit an offence and agree to be cautioned. If they don't agree, they can be charged and a court hearing will be required. A caution is not a criminal conviction, but it could be used as evidence of bad character if that person goes to court for another crime.

Where there is no further action or a caution has been issued, it is likely that the matter will pass to the school to undertake its own internal disciplinary investigation (see section 14 on conducting an internal investigation). Where an individual is subject to bail, reported for summons or charged, it is likely that the school will be unable to proceed with an internal disciplinary investigation until the criminal matter has concluded. The nominated Governor should discuss opportunities to proceed with the LADO/EPS.

10. Outcomes of child protection investigations

Once an issue is identified as a child protection allegation, if the police have not been involved in the investigation, it will be referred to them, who will determine, in conjunction with Crown Prosecution Service, whether any criminal action will be taken against the Headteacher. It is important to remember that the test of evidence in a criminal court ('beyond reasonable doubt') is higher than that required in a civil court or a disciplinary process ('balance of probability'). Therefore, a decision not to

proceed to a criminal charge, for example because of a lack of evidence, does not mean that there is not a concern to be addressed at a school level. For example, it is sometimes decided that it is not in the child's best interest to be a witness in a criminal trial, regardless of evidence and therefore a criminal trial will not proceed.

There are 5 potential outcomes to each allegation:

- **False:** there is sufficient evidence to disprove the allegation;
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive. Care should be taken in dealing with such allegations as some facts may not be wholly untrue. Some parts of an allegation may have been fabricated or exaggerated but elements may be based on truth
- **Unsubstantiated:** there is insufficient evidence to either to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- **Substantiated:** there is sufficient evidence to prove the allegation; (in an employment context) A substantiated allegation may possibly lead to criminal proceedings and/or disciplinary action, advice or guidance, but in a criminal court, the test is not on the 'balance of probabilities', but 'beyond reasonable doubt', which is a much stronger test.
- **Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made.

At the point the school are cleared to conduct their own investigations, you, in conjunction with EPS, will need to determine what investigations need to take place (see section 14, [Conducting an internal investigation](#))

11. Headteachers who leave before the end of a child protection process

Where the Headteacher resigns their position before the end of the process, it will still be essential for the school to continue to co-operate fully with the process and, where no prosecution is taking place, for the school to complete its own internal investigation, under the school's disciplinary procedure, even without the co-operation of the Headteacher. Completing an investigation may require a hearing to consider the evidence and reach a conclusion. A resignation does not remove the obligation on the school to conclude the process.

It is essential that the outcome of such an investigation is shared with any potential employer as part of a reference process, in accordance with the principles of data sharing outlined section 15.

In addition, an employee who resigns in the face of such allegations is likely to be reported to Disclosure and Barring Service (DBS) to enable them to make a decision on the Headteacher's future working with children. The DBS will need all the information gathered from the investigation, to make the best decision in the interests of children and to act fairly to the Headteacher. A resignation from the Headteacher will not prevent any such referral to the DBS being made if the appropriate criteria for referral have been met.

EPS will provide further advice to the nominated Governor in the event that the Headteacher resigns before the process is completed.

12. Termination of employment by mutual/settlement agreement

Where an external or internal investigation is taking place, the Headteacher or their representative may try to approach the school to seek a mutually agreed termination of their employment through a

formal agreement, referred to as a mutual or settlement agreement (previously called a compromise agreement). Mutual agreements and settlement agreements normally include the concept of making a payment in return for the individual departing and/or not pursuing claims against the school.

The nominated Governor must seek advice from Education Personnel Services in this situation. Such agreements are normally inappropriate in child protection cases or in situations where a person's behaviour makes them unsuitable to work with children. Further, such agreements are contrary to DfE advice. The appropriate routes to termination of employment are through resignation or formal dismissal. Such agreements will only be used in exceptional cases and with the advice of EPS.

13. Dealing with the media

Media attention during an investigation can add to the problems for the school and the Headteacher and may even hinder an investigation. Every effort must be made to maintain confidentiality and guard against unwanted publicity when an allegation is being investigated.

It is important to be aware of the reporting restrictions introduced by the Education Act 2002, which prohibit 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 college (where that publication would identify the teacher as the subject of the allegation).

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 Headteacher by members of the public).

Early contact with the authority's Press Office for advice and support for dealing with media enquiries is strongly advised.

Regrettably it is often the case that the media become aware of allegations through parents or pupils. Any briefings to staff and Governors must emphasise the need to avoid direct contact with the media. Advising the Headteacher of any early indications of media coverage will be essential.

The nominated governor should take advice from the LADO, police and children's social care services to agree the following:

- who needs to know and 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.

14. Conducting an internal investigation

The first step in conducting an internal investigation will be, in consultation with the LADO, to determine who should undertake this. Who undertakes this will depend on the nature of the issues and on the availability/experience of the nominated Governor. In some cases, it may be appropriate for an independent person or a trained person from Children's Services, or Education Personnel Services to conduct an objective investigation, or it may be deemed appropriate that the nominated Governor will conduct this investigation with support from EPS.

If the nominated Governor is conducting the investigation, EPS will be able to advise and support them in how to conduct such an investigation, but the nominated Governor should be fully familiar with the guidance on how to conduct an investigation, in this section. The nominated Governor must also be fully familiar with the school's disciplinary procedure.

The eventual outcome of the investigation will be a report that documents the key evidence and determines whether there is a case to answer at an internal disciplinary hearing, under the school's disciplinary procedure.

14.1 Key principles and role of the nominated Governor

The investigation should be unbiased and cover all aspects and address all issues raised. The investigation is primarily a fact-finding exercise. The Headteacher at this point, if they are not already aware, must be made aware of the allegation(s) and be given the opportunity to seek advice from their union or professional association before responding fully to the allegation.

The Headteacher must have the opportunity to respond to the allegation as part of the investigation and be given sufficient time and information to allow them do this.

Equal consideration should be given to all the evidence and the nominated Governor must include all facts in their final report without excluding evidence obtained from either party. It is important that evidence from both parties is presented.

Employment tribunals will judge the fairness of an investigation using the 'band of reasonable responses' test, which are:

- that the employer's belief in the reason for dismissal was genuine (if the case leads to dismissal);
- that the employer's belief was based on reasonable grounds;
- that the employer's belief was formed after as much investigation into the matter as was reasonable in all the circumstances of the case.

The key purpose of an investigation is to discover all the relevant facts and information in a fair, reasonable and objective manner. The nominated Governor should not be swayed by his or her own opinion or the opinions and views of any witnesses. It is the responsibility of the nominated officer to separate fact from opinion. The nominated Governor must not prejudge the outcome of the investigation by assuming guilt or innocence.

If the matter goes to a disciplinary hearing, the nominated Governor will need to attend that hearing as a witness to give evidence about their investigation and its findings. It is likely that EPS will be leading in delivering the case to the governor committee.

The investigation should be concluded as swiftly as possible, noting the timescales outlined in section 5, above.

The support provided by EPS will depend on the nominated Governor's confidence and ability in investigating the case. The level of investigation that is needed will also depend on the depth of any police investigation and whether the nominated Governor has access to witness statements, court transcripts or a summary of the investigation from the police.

14.2 Interviewing the Headteacher and witnesses – general principles

In order to establish facts the nominated Governor may wish to use open questions, such as beginning a question with Where, Why, How, When, What and Can. These can be most useful when

interviewing witnesses as they allow the witness the opportunity to explain what they observed. They will also avoid any allegations of the nominated Governor trying to lead a witness. Whilst the nominated Governor may have a list of questions that they wish to cover, the questions asked will largely depend on the course the interview takes. The nominated Governor or note taker should, however, record the questions asked along with the answers.

For example:

- Where were you on Monday morning, 22 November?
Or
- What can you recall about the morning of the 22 November?

A follow up question could be:

- What can you recall about your interactions with Mrs Smith on the morning of 22 November?

A leading question would be:

- What did you do when you saw Mrs Smith pull Johnny Baxter to the floor?
Or
- Where were you when Mrs Smith pulled Johnny Baxter to the floor?
-

At times a more precise answer may need to be obtained and then closed questions may be useful. These will be questions structured in such a way as to require only a “yes” “no” or short answer.

For example:

- Did Johnny Baxter fall to the floor on 22 November?
- Is that in line with the school’s behaviour policy?

The nominated Governor can record the Headteacher’s or witness’s answer under each question. It is helpful for these to be numbered so that at a hearing they can easily be referred to and referenced.

14.3 Interviewing the Headteacher

The Headteacher will need to be formally told what the nature of the allegation(s) is and be given opportunity to respond. Typically this will happen at an investigation meeting as part of the school’s disciplinary procedure.

The nominated Governor will need to establish with their EPS adviser, prior to this meeting what the nature of the allegations are, which may link to the school’s disciplinary rules, local codes of conduct or national standards. The Headteacher should be asked to provide any initial response to the allegations during that meeting, but must be asked to provide a written statement. The meeting must be followed up in writing, clearly stating the nature of the allegations.

A meeting of this nature held under the school’s disciplinary procedure is a formal meeting and therefore the Headteacher is entitled to bring a work colleague or a representative from the professional association. If the Headteacher wishes to bring a work colleague and that person is involved in the investigation, perhaps as a witness, then the nominated Governor will need to explain to the Headteacher that this might compromise the fairness of the investigation and that they will need to choose another representative.

Consideration should be given to where the interview actually takes place to allow for confidentiality. Arrangements should be made for a separate room to be available for the Headteacher and their

representative to use during adjournments.

14.4 Interviewing other witnesses

Witnesses should firstly be asked to provide a written statement signed and dated based on what they have witnessed. If the nominated Governor decides that they need clarification on any point they may interview the witness, recording their questions and the witnesses response. The nominated Governor should prepare a list of questions in advance and record the responses of the employee or witness; it may be helpful to have a note taker for this purpose. The witness must be requested to sign both their original written statement and the record of the investigatory interview. The nominated Governor should also sign the record of the interview.

All employees who are interviewed within an investigation must be advised of the status of the interview. Any details of the allegations and the meeting must be kept confidential by the employee and must not be discussed with colleagues. The nominated Governor may stress that a breach of confidentiality is a serious matter (as it could lead to disciplinary action in its own right). The witness needs to know that they may be called to give evidence based on their statement/responses in a hearing.

Investigation meetings may be stressful for the employee or witness but the nominated Governor must remain impartial, and not offer sympathy or agree with points of view expressed.

Consideration should be given to where the interview actually takes place to allow for confidentiality. The nominated Governor may also decide to offer a short break in the meeting which will allow the employee or witness time and space to gather their thoughts.

If following the interview the employee/witness disagrees with a response recorded, the original response should remain but a note can be added to show that the employee/witness had later decided to amend their response. They can submit a further statement signed which will be attached to the original document.

The statements or records of interviews should be submitted as evidence in their complete form and must not be edited in any way.

14.5 Interviewing children

If as part of the investigation the nominated Governor feels that it is necessary to interview children the following guidance should be adhered to, remembering that every interview regardless of how it is conducted needs parental consent:

- it will be better to ask a child to write down their own account of events, as this will be in their own words. Do not try to correct spelling mistakes etc. If this is not possible (e.g. due to age or particular special needs) then the interviewer should interview the child in the presence of a parent and if this is deemed not appropriate, or the parent is happy not to be present, the interview should be conducted in the presence of another appropriate adult;
- write questions down in advance so that it can be shown that the interviewer did not ask any leading questions;
- record the exact question asked and the answers the pupil gives with the record signed by both adults present;
- interview children from different friendship groups to get an unbiased account;
- children will never be required to attend a hearing as a witness and must not be asked for further information, a statement or answer questions if they have been already interviewed by the police or other agency as part of the formal investigation. Statements taken as part of

another agency's investigation may be able to be obtained from that agency directly, once their case is concluded.

The governor, in conjunction with the LADO, may wish to consider whether it is more appropriate for a member of the school's senior leadership team to interview the child instead of the governor, provided this person is not involved in the matter in any other capacity.

Hampshire's Child Protection Unit has a budget which can be used by the LADO by Hampshire maintained schools to bring in external qualified people to interview pupils. Academy schools should contact the LADO who will recommend an independent investigator from their list. Academy schools will need to pay for this service. Non-Hampshire schools should contact their own authority's LADO for further information on this type of service. For further information please contact EPS or the LADO. Governors are encouraged to make use of the specialist expertise provided by this service.

14.6 Dealing with anonymity

In any investigation, the nominated Governor will need to consider what 'weight' to give the evidence that is collected. Evidence provided by witnesses who are happy to write a statement but not put their name to it, or witnesses that are not prepared to attend a hearing as a witness will hold very little, if any, weight. The nominated Governor should identify in their report the 'weight' they have given to any evidence obtained in these circumstances.

If other colleagues or children's names are recorded in statements and are not essential or relevant as part of the evidence these can be crossed through to promote confidentiality if applicable.

14.7 Refusal to be interviewed

On occasions the Headteacher who is subject to investigation may refuse to be interviewed as part of the investigation. If the nominated Governor is unable to persuade them otherwise (or their representative) the nominated Governor must let the Headteacher know that if they continue to refuse, they will have to conclude their investigation without being able to include their responses to the allegations.

The nominated Governor will need to try to reassure the Headteacher that it is beneficial to them to have their opportunity to respond to any allegations and encourage them to seek advice from their trade union representative.

A refusal to attend an investigation meeting does not mean that the investigation cannot be completed.

Any employees, e.g. witnesses, who refuse to assist with an investigation should be reminded of their responsibility as an employee of the school to co-operate and the nominated Governor may add that failure to assist an internal investigation may lead to disciplinary action.

Where a witness refuses to take part in the internal investigation then this should be reported in the nominated Governor's report.

14.8 Assessing the evidence and writing the report

The nominated Governor should consider the nature of allegation or complaint and ensure that they have investigated all elements of this. If necessary it may require the employee or witnesses being re-interviewed to ensure that all areas have been addressed. The nominated Governor is reminded to bear in mind the third point in the 'band of reasonable responses' test (see section 14.1) i.e. that the

employer's belief was formed after as much investigation into the matter as was reasonable in all the circumstances of the case.

The investigation report must be fair and balanced with regard to the evidence gathered. The writing style should be clear, concise and stick to the facts, so that pertinent points are clear and that the reader is not distracted by irrelevant information.

Appendix 1 provides the nominated governor with a suggested approach to compiling an investigation report. This should help the nominated governor to analyse the evidence gathered, both in support of management's case and the Headteacher's. The conclusion will be a summary of the nominated governor's findings and whether the evidence suggests, on the balance of probabilities, that there is a case to answer.

15. Retention of evidence

Where further action is required following the investigation, i.e. a formal disciplinary hearing, the nominated governor must retain the evidence compiled during the investigation, to justify any subsequent action taken.

For **false, unsubstantiated, unfounded, and substantiated** allegations, a clear and comprehensive summary of the allegation, the investigation and the resolution must be retained on the school's personnel file, with a copy given to the Headteacher. It must be retained until the Headteacher has reached normal pensionable age or for a period of 10 years from the date of the allegation if that is longer.

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

In the majority of cases where an allegation **proven to be malicious**, it is likely that EPS will advise the school to retain only a letter, which has been sent to the employee, on the employee's file. The letter should say:

- that an incident was alleged to have happened between x pupil and the employee on x date;
- that the incident was fully investigated by [name and position];
- that the investigation proved the allegation to be malicious; and
- confirm that all statements and evidence gathered as part of the investigation were confidentially destroyed in accordance with the principles of DfE guidance 'Keeping Children Safe in Education'

16. Dealing with Unsubstantiated or Malicious allegations

16.1 Action following determination of an unsubstantiated or malicious allegation

If it is determined that the allegation is malicious or unsubstantiated, the nominated governor must, in conjunction with the LADO, EPS and HIAS:

- consider, where appropriate, and in consultation with Social Care whether the child (or children) might have been abused by someone else;
- inform the Headteacher of the allegation and the fact that no further action is to be taken;
- inform the parents of the child (or children) of the allegation (if they are not already aware)

- consider whether informal professional advice to the Headteacher is appropriate and, if so, in what form;
- consider whether counselling and support is appropriate for the child or children who made the allegations.

If an allegation (made by a child/pupil) is determined to be malicious or unsubstantiated, the LADO will refer the matter to Social Care to determine whether the child concerned is in need of services, or may have been abused by someone else. In the event that an allegation is shown to have been deliberately invented or malicious, the Chair of Governors and Headteacher will consider what action is appropriate against the pupil who made it, in accordance with the school's behaviour management policy. Where the malicious allegation was made by an employee, worker, or volunteer, action should be considered in accordance with the school's disciplinary policy.

The Police should be asked whether any action might be appropriate against the person responsible if s/he was not a pupil or employee/worker/volunteer in the school. This is in accordance with Working Together to Safeguard Children.

16.2 Appropriate support for the Headteacher

To ensure appropriate support is available to the Headteacher, close liaison with EPS and the appropriate Professional Association/Trades Union will be required.

If the Headteacher has been suspended, this will need to be formally lifted. A programme of support, both professional and personal is likely to be required, depending on the situation and length of absence from the school. The impact of malicious allegations on the Headteacher must not be underestimated, as with any member of staff. In cases such as this, further advice on providing appropriate support to the Headteacher will be provided by EPS.

17. Learning lessons

At the conclusion of case, where the allegations were substantiated, the LADO should review the circumstances of the case in conjunction with the nominated governor, EPS and HIAS to determine whether or not any improvements can be made in the school's procedures or practice to help prevent a further issue arising in the future.

Such a review would also include the decision to suspend the member of staff, the duration of the suspension and whether or not the suspension was justified. Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The LADO and nominated governor should consider how future investigations of a similar nature could be carried out without suspending the individual.

18. Writing references

In general, the law imposes no obligation on an employer to give a reference. The only exception to this is that under the School Staffing (England) (Amendment) Regulations 2012, maintained schools are required to provide detail on any capability procedures in the preceding two years for teachers where such a request is made by maintained or academy schools. In circumstances where a request is made and formal capability procedures have been applied in the preceding two years, a maintained school must disclose:

- the nature of the concerns which gave rise to the procedures being applied
- the duration of the procedures
- the outcome of application of the procedures (e.g. whether a warning was applied)

In addition, where a reference is provided:

- The Equality Act 2010 prevents employers asking job applicants questions about health and disability unless and until the applicant has received a conditional job offer. This means that schools are strongly advised not to ask such questions in their [pre-interview references](#) and instead should seek responses to these questions in [post-conditional offer references](#).

In the case of **Substantiated** allegations, it is likely that a formal warning was issued through a disciplinary process. Even if this formal warning has ‘expired’, the nature of the issue and the fact that a disciplinary warning was issued (and its expiry date) **must always** be included, whether or not there have been any causes for concern since the issue of that warning.

There are some instances when, depending on the nature of the allegation and circumstances of the case, it may be appropriate to record **malicious, unsubstantiated, unfounded** or **false** allegations in references, particularly where there is a history of repeated concerns or allegations that have been found to be false, malicious or unsubstantiated. Advice must always be sought from the LADO and EPS at the completion of a case as to whether it is appropriate to share details of the allegation in a reference, and the agreed reasons to support the decision should be kept on the individual’s personnel file.

In writing a reference, the nominated Governor must be willing to share full and relevant information concerning *proven* child protection allegations or concerns about a Headteacher when they are moving to a new employer or school, prior to any offer of employment being made.

References should include all relevant matters which relate to the job for which the Headteacher has applied, to assist the recognition of patterns of behaviour, which may not be obvious when considered in isolation.

A Headteacher should be allowed to see any reference the nominated Governor has prepared.

For further guidance on writing references, please refer to the [Manual of Personnel Practice \(Managing and Developing Staff – References\)](#) accessible through Hampshire Governor Services intranet under P for Personnel.

19. Useful contacts and links

Hampshire Governor Services

For advice on matters of governance and your role in managing the situation from a Governor perspective, including an e-tool on safeguarding allegations

- Governor Services intranet website
www.hants.gov.uk/educationandlearning/governors/governors-intranet
- Telephone 02380 814820
- Email governors@hants.gov.uk

Education Personnel Services (EPS)

For advice on investigations, suspension and managing the employee relations aspects of an absent Headteacher, pay and conditions of services e.g. for acting up arrangements

- Manual of Personnel Practice
www.hants.gov.uk/educationandlearning/education-personnel-services/manual
- Telephone 02380 383500
- Email eps.consultants@hants.gov.uk

Hampshire Inspection and Advisory Services (HIAS)

For advice on the professional aspects of arranging leadership of the school in the absence of the Headteacher

- HIAS intranet www.hants.gov.uk/educationandlearning/hias
- Telephone 01962 876207
- Email hias.enquiries@hants.gov.uk or contact your attached Inspector if you have one

20. Frequently Asked Questions

Q1. What can I say to staff?

A1. In normal circumstances it is wholly inappropriate to share any information relating to the investigation and reasons for the Headteacher's absence to staff. If the Headteacher is going to be absent for a prolonged period of time, typically staff would be told that the Headteacher will not be in school due to personal reasons and will be told of the arrangements for leadership of the school in the Headteacher's absence.

However in some cases, some limited information may need to be shared, particularly if there is media interest. If some information is going to be included in the press, it would be best practice to share this with staff first. The LADO and EPS can advise you further in these particular circumstances.

Q2. What can I tell my Deputy Headteacher / Senior Leadership Team?

A2. Similarly to Question 1 above, your senior leadership team and Deputy Headteacher would not be party to any more additional information in the short term. However, if the Deputy Headteacher is asked to 'act up' for a period of time in the prolonged absence of the Headteacher, or an interim Headteacher is appointed, they may need to know some limited information. You must discuss what needs to be disclosed with the LADO and EPS **before** sharing any information.

Q3. What can I say to other Governors?

A3. Similarly to Question 1 above, you must not share any information with your governors, other than the absence of the Headteacher and the interim leadership arrangements that have been put in place.

Q4. What can I say to pupils and parents?

A4. Similarly to Question 1 above, you must not share information with pupils or parents. If there are arrangements that need to be made for the leadership of the school then these arrangements would be communicated only, not the reason for them. This should be communicated through the school's normal communication mechanisms.

Q5. I have no appropriate person to 'act up', what other options do I have?

A5. Your School Improvement Manager will advise you on the arrangements and options for leadership of the school in the prolonged absence of the Headteacher. Interim arrangements, including secondments, are a possibility. Your School Improvement Manager will provide you with further information if this is necessary.

Q6. Who do I contact for support?

A6. This depends on the nature of your enquiry. You may feel you need personal support during this process and governors of schools who have bought the services of Hampshire's Employee Assistance Programme can access this service on 0800 030 5182 or via their website: <https://healthassuredeap.co.uk/home/>. Schools that have purchased counselling support from other providers should access these services where necessary. Contact details will be held locally by the school. Contacts for other services are found in Section 19 of this guidance.

Q7. Is it ok for the nominated person to be available only outside working hours (as a lot of governors work full time) for support?

A7. The specific arrangements for the contact person depend on the Headteacher and the Governor. It may be appropriate to have two contacts with different remits – the Deputy Headteacher for matters relating to school and of a professional nature, a Governor for more general support. It doesn't matter who provides this support, what matters is that it is accessible and actually operates to support the Headteacher.

SharePoint Unique Identifier	HRDOCID-561776108-83514
Version and date of publication:	V1 July 2019 V1.1 September 2020
Owner:	EPS

Appendix I – Template Investigation Report

1.0 INTRODUCTION

- 1.1 Provide brief details of the ‘subject’ of the investigation, their employment history with school (and HCC, where applicable) other schools/ dept, current role and how long held etc.
- 1.2 Provide brief outline of how the concerns arose
- 1.3 Note of any suspended and when, or whether asked to stay at home or if there are any specific changes in place to allow the investigation to take place i.e. line management responsibility removed, budget responsibility suspended, taken off usual duties but still within school
- 1.4 If there are specific allegations record them at this point

2.0 SCOPE AND COVERAGE

All interviewees should be recorded; the initials should be inserted after each name as these will be the initials used throughout the report.

If the investigator has not interviewed all individuals all individuals suggested by the ‘subject’ of the investigation the decision should be recorded in this section (including reason e.g. character reference only).

List of files and documents inspected

- 2.1 Investigation objectives:
To establish whether:
 -
 -
- 2.2 Interviews were held as follows
- 2.3 The following records were examined:
 - Letter of complaint
 - Personal File

2.4 Appendices:

Appendix 1	
Appendix 2	
Appendix 3	

3.0 BACKGROUND

Include brief details of the service area/ location/ work environment

Key responsibilities of the ‘subject’ of the investigation

Include anything else to ‘set the scene’ for the reader - there is every chance that the reader will not have any knowledge of the service area

Aim to keep this section approximately half a page in length or a full page for more complex cases.

3.1

3.2

3.3

3.4

4.0 FINDINGS

Organise the findings under each main allegation

- Avoid pages and pages of continuous text - break up with headings e.g. 'Working Relationships', 'Service Complaints', 'Performance Management', 'Shouting Incident - 31 May', 'Previous Management Action', etc... This makes the report easier to read
- Avoid using vast extracts from statements - only quote directly from the statements where it is necessary, for example, to illustrate the use of language or if the response to a question shows particular disregard for policy or respect for others. It is the investigator's responsibility to analyse all the statements and draw out all corroborative evidence. Interviewees are not always articulate during interviews and the investigator should therefore use their own words to concisely convey the findings
- Investigators are not just fact finders - it is the investigator's responsibility to explain what the evidence means. Avoid 'he said, she said' reports - the reader should not be left trying to establish what all the facts mean.
- If the evidence is inconclusive or there is no evidence to substantiate an allegation - say so. The lead manager wants to know whether there is any evidence to support the allegations - it is also the investigator's responsibility to explain how significant the evidence is - this should come across throughout the report.
- It is important to note any mitigating factors e.g. lack of procedural guidance, management action or expected documentation and any other actions / behaviours which may have compounded or aggravated the situation.
- Using full names throughout the report can be very repetitive - use initials e.g. Joe Bloggs (JB) - always quote full name and job title the first time they are mentioned with the report - initials thereafter.
- In addition to the specific allegations the report should include any patterns of behaviour that may have some relevance.
- If specific actions demonstrate a breach of school (or where applicable HCC) policy or procedures - these should be noted throughout the report, where appropriate.

ALLEGATION 1:

Sub Heading

4.1

4.2

4.3

ALLEGATION 2:

Sub Heading

4.4

4.5

4.6

5 SUPPLEMENTARY ISSUES

5.1 There are no supplementary issues to this report **OR**

5.2 Cover issues which you have identified but are not directly

6 CONCLUSION

This is where the investigator provides an overall fact based opinion on a) whether there is any evidence to support the allegations and b) the strength of the evidence.

Support the conclusions with the strongest evidence without repeating the text in the main body of the report (where possible) - the conclusions should be clear and concise.

Identify to the reader the strengths and weaknesses in the evidence - emphasising the importance of any issues and where evidence can be open to difference interpretation / scenarios.

Draw out key facts which demonstrate particular breaches of policy e.g. Code of Conduct, Financial Regulations, service policies and procedures etc.

If there are any mitigating factors ensure that they are clear within the conclusions and it is important to explain their significance.

6.1

6.2

6.3

6.4

7.0 RECOMMENDATIONS

The report should set out recommended course(s) of action but **not** levels of sanction