



Dealing with allegations of abuse against staff

Revised June 2020
To be reviewed June 2021

This policy should be read in conjunction with the OxSFC COVID-19 policy that overrides the guidelines/procedures in this policy, where appropriate. The guiding principle will always be to maintain the health and safety of all stakeholders.

(Please also refer to the Child Protection Policy)

Aim

The ultimate aim of Oxford Sixth Form College's Dealing with allegations of abuse against staff policy is to:

- Support all staff to ensure a fair and just process is adhered to following any allegation.
- make it clear to all students and staff allegations are taken seriously and given due care and attention

The DfE have provided statutory guidance relating to the College's duties in handling allegations of abuse against teachers and other staff.

<http://www.education.gov.uk/aboutdfe/advice/g0076914/dealing-with-allegations-of-abuse-against-teachers-and-other-staff>

The guidance relates to the following legislation.

- the Children Act 1989;
- section 157 of the Education Act 2011 and the Education (Independent School Standards) (England) Regulations 2014
- the Children Act 2004;
- section 11 of the Children Act 2004 (other agencies);
- Keeping Children Safe in Education 2020 (KCSiE) and
- Working Together to Safeguard Children 2018

ALLEGATIONS MADE AGAINST STAFF

Regrettably, allegations of abuse may involve a member of the College staff. In these circumstances the allegations must be reported to the Designated Safeguarding Lead (DSL) immediately. On receipt of such an allegation the DSL will contact the Local Authority Designated Officer (LADO). If the allegation concerns the Principal, the DSL will contact the Safeguarding Governor as a matter of urgency.

The College is required to manage cases of allegations that might indicate a person would pose a risk of harm if they continue to work in regular or close contact with students in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that a teacher or member of staff (including volunteers) in the College has:

- behaved in a way that has harmed a student, or may have harmed a student;

- possibly committed a criminal offence against or related to a student; or
- behaved towards a student in a way that indicates he or she would pose a risk of harm to students

Note: This part of the KCSiE 2020 guidance relates to members of staff and volunteers who are currently working in any school or college regardless of whether the school or college is where the alleged abuse took place. Allegations against a teacher who is no longer teaching should be referred to the police. Historical allegations of abuse should also be referred to the police.

Principles

All allegations about members of staff will be dealt with according to the following principles:

- Safeguarding the student is paramount, but the College also has a duty of care towards its employees. The process should be well managed and carried out in a way that provides effective protection for the student and at the same time supports the person who is the subject of the allegation.
- Investigations should be fair, thorough, consistent and quick, and the response should be proportionate
- The process should be transparent but confidential

The person about whom the allegation has been made should be told about the allegations and the progress of the case, and given a full opportunity to answer the allegation and make representation about it. Resignation and compromise agreements must not prevent an allegation being followed up.

Every effort should be made to maintain confidentiality and guard against unwanted publicity whilst an allegation is being considered or investigated.

Initial considerations

The procedures for dealing with allegations need to be applied with common sense and judgement. Many cases may well either not meet the criteria set out above, or may do so without warranting consideration of either a police investigation or enquiries by

local authority children's social care services. In these cases, local arrangements should be followed to resolve cases without delay.

Some rare allegations will be so serious they require immediate intervention by children's social care services and/or police. The Lead Designated Officer should be informed of all allegations that come to the College's attention and appear to meet the criteria so they can consult police and children's social care services as appropriate.

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:** to reflect cases where there is no evidence or proper basis which supports the allegation being made

In the first instance, the DSL and Safeguarding Governor should immediately discuss the allegation. The purpose of an initial discussion is for the DSL and Governor to consider the nature, content and context of the allegation and agree a course of action. The DSL may ask the Principal or Assistant Principal (Academic) to provide or obtain relevant additional information, such as previous history, whether the student or their family have made similar allegations previously and the individual's current contact with students. There may be situations when the DSL will want to involve the police immediately, for example if the person is deemed to be an immediate risk to children or there is evidence of a possible criminal offence. Where there is no such evidence, the DSL should discuss the allegations with

the Safeguarding Governor in order to help determine whether police involvement is necessary.

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

The DSL should inform the accused person about the allegation as soon as possible after consulting the Safeguarding Governor. It is extremely important that the DSL provides them with as much information as possible at that time. However, where a strategy discussion is needed, or police or children's social care services need to be involved, the DSL should not do that until those agencies have been consulted, and have agreed what information can be disclosed to the accused. Employers must consider carefully whether the circumstances of a case warrant a person being suspended from contact with students at the College or whether alternative arrangements can be put in place until the allegation or concern is resolved. All options to avoid suspension should be considered prior to taking that step further information on suspension follows).

If there is cause to suspect a student is suffering or is likely to suffer significant harm, a strategy discussion should be convened in accordance with the statutory guidance *Working Together to Safeguard Children* (2018) and *Keeping Children Safe in Education* (2020). If the allegation is about physical contact, the strategy discussion or initial evaluation with the police should take into account that College staff are entitled to use reasonable force to control or restrain students in certain circumstances, including dealing with disruptive behaviour (see Promoting Good Behaviour policy).

Where it is clear that an investigation by the police, LADO or children's social care services is unnecessary, or the strategy discussion or initial evaluation decides that is the case, the DSL should discuss the next steps with the Safeguarding Governor. In those circumstances, the options open to the College depend on the nature and circumstances of the allegation

and the evidence and information available. This will range from taking no further action to dismissal or a decision not to use the person's services in future. Suspension should not be the default position: an individual should be suspended only if there is no reasonable alternative.

In some cases, further enquiries will be needed to enable a decision about how to proceed. If so, the DSL should discuss with the Safeguarding Governor how and by whom the investigation will be undertaken. In straightforward cases, the investigation should normally be undertaken by a senior member of College's staff. However, in other circumstances, such as lack of appropriate resource within the College, or the nature or complexity of the allegation will require an independent investigator. Many local authorities already provide for an independent investigation of allegations, often as part of the personnel services that maintained schools and colleges can buy in from the authority. It is important that local authorities ensure that Colleges have access to an affordable facility for independent investigation where that is appropriate.

Supporting those involved

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

The DSL should appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and current work-related issues. Social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

Parents or guardians of a student involved should be told about the allegation as soon as possible if they do not already know of it. However, where a strategy discussion is required, or police, LADO or children's social care services need to be involved, the DSL should not do so until those agencies have been consulted and have agreed what information can be disclosed to the parents or guardians. Parents or guardians should also be kept informed about the progress of the case, and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process. The deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but the parents or guardians of the student should be told the outcome in confidence. Parents and guardians should also be made aware of the requirement to maintain confidentiality about any allegations made against teachers whilst investigations are ongoing as set out in section 141F of the Education Act 2002 (see paragraph 125). If parents or guardians wish to apply to the court to have reporting restrictions removed, they should be told to seek legal advice.

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

In deciding what information to disclose, careful consideration should be given to the provisions of the General Data Protection Regulations 2018, the law of confidence and, where relevant, the Human Rights Act 1998.

Confidentiality

When an allegation is made, the College will make every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered. The Education Act 2002 introduced reporting restrictions preventing the publication of any material that may lead to the identification of a teacher who has been accused by, or on behalf of, a student from the same college (where that identification would identify the teacher as the subject of the allegation). The reporting restrictions remain in The Education Act 2011, 141F, apply until the point that the accused person is charged with an offence, or until the Secretary of State publishes information about an investigation or decision in a disciplinary

case arising from the allegation. The reporting restrictions also cease to apply if the individual to whom the restrictions apply effectively waives their right to anonymity by going public themselves or by giving their written consent for another to do so or if a judge lifts restrictions in response to a request to do so.

The legislation imposing restrictions makes clear that "publication" of material that may lead to the identification of the teacher who is the subject of the allegation is prohibited. "Publication" includes "any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public". This means that a parent who, for example, published details of the allegation on a social networking site would be in breach of the reporting restrictions (if what was published could lead to the identification of the teacher by members of the public).

In accordance with the Association of Chief Police Officers' (ACPO) guidance the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. (In exceptional cases where the police would like to depart from that rule, for example an appeal to trace a suspect, they must apply to a magistrates' court to request that reporting restrictions be lifted).

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

- who needs to know and, importantly, exactly what information can be shared;
- how to manage speculation, leaks and gossip;
- what, if any information can be reasonably given to the wider community to reduce speculation; and
- how to manage press interest if and when it should arise.

Resignations and 'settlement agreements'

If the accused person resigns, or ceases to provide their services, this should not prevent an allegation being followed up in accordance with this guidance. A referral to the DBS **must** be made, if the criteria are met. If the accused person resigns or their services cease to be used and the criteria are met it will not be appropriate to reach a settlement/compromise agreement. A settlement agreement which prevents the College from making a DBS referral when the criteria are met would likely result in a criminal offence being committed as the College would not be complying with its legal duty to make the referral.

It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of students, including any in which the person concerned refuses to cooperate with the process. Wherever possible the accused should be given a full opportunity to answer the allegation and make representations about it. But the process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be substantiated on the basis of all the information available, should continue even if that cannot be done or the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

Settlement agreements by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, should not be used in cases of refusal to cooperate or resignation before the person's notice period expires. Such an agreement will not prevent a thorough police investigation where that is appropriate.

Record keeping

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

The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

References

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

Timescales

It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. Target timescales are shown below: the time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. 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.

Cases where it is clear immediately that the allegation is unsubstantiated or malicious should be resolved within one working week. Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the DSL to deal with it, although if there are concerns about student protection, the DSL should discuss them with the Safeguarding Governor. In such cases, if the nature of the allegation does not require formal disciplinary action, the employer should institute appropriate action within three working days. If a disciplinary hearing is required and can be

held without further investigation, the hearing should be held within 15 working days.

Oversight and monitoring

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

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

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

If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to: charge the individual; continue to investigate; or close the investigation. Wherever possible, that review should take place no later than four weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

Suspension

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

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

The DSL should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can be resolved quickly and without the need for suspension. If the DSL, police, LADO and children's social care services have no objections to the member of staff continuing to work during the investigation, the DSL should be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternatives should be considered by the DSL before suspending a member of staff:

- redeployment within the College so that the individual does not have direct contact with the student or students concerned;
- providing an assistant to be present when the individual has contact with students;

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

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

If immediate suspension is considered necessary, the rationale and justification for such a course of action should be agreed and recorded and agreed by both the Principal and the DSL. This should also include what alternatives to suspension have been considered and why they were rejected.

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

Children's social care services, the LADO or the police cannot require the Principal to suspend a member of staff or a volunteer, although they should give appropriate weight to their advice. The power to suspend is vested in the proprietors of the College, or Principal of the College who are the employers of staff at the College. However, where a strategy discussion or initial evaluation concludes that there should be enquiries by

the children's social care services and/or an investigation by the police, the DSL should canvass police, the LADO and children's social care services for views about whether the accused member of staff needs to be suspended from contact with children in order to inform the College consideration of suspension. 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.

Information sharing

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

Where the police are involved, wherever possible the employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

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

Specific actions

Following a criminal investigation or a prosecution

The police should inform the DSL immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after person has been charged. In those circumstances the DSL should discuss with the Principal whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police, LADO and/or children's social care services should inform that decision. The options will depend on the circumstances of the case and the consideration will need to

take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

On conclusion of a case

If the allegation is substantiated and the person is dismissed or the Principal ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the DSL should discuss with the Principal and their HR Officer whether the College will decide to make a referral to the DBS for consideration of inclusion on the barred lists is required; and in the case of a member of teaching staff whether to refer the matter to the National College for Teaching and Leadership (NCTL) to consider prohibiting the individual from teaching.

There is a legal requirement for 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 student; or if a person otherwise poses a risk of harm to a student.

Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the Principal should consider how best to facilitate that. Most people will benefit from some help and support to return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The Principal should also consider how the person's contact with the student or students who made the allegation can best be managed if they are still a student at the College.

In respect of malicious or unsubstantiated allegations

If an allegation is determined to be unsubstantiated or malicious, the DSL should refer the matter to the children's social care services to determine whether the student concerned is in need of services, or may have been abused by someone else. If an allegation is shown to be deliberately invented or malicious, the Principal should consider whether any disciplinary action is appropriate against the student who made it; or whether the police should be asked to consider if action

might be appropriate against the person responsible, even if he or she was not a student.

Learning lessons

At the conclusion of a case in which an allegation is substantiated, the DSL should review the circumstances of the case with the Safeguarding Governor and Principal to determine whether there are any improvements to be made to the College's procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. Lessons should also be learnt from the use of suspension when the individual is subsequently reinstated. The DSL, Safeguarding Governor and Principal should consider how future investigations of a similar nature could be carried out without suspending the individual.

Allegations against other persons working at but not directly employed by the College

If the allegation is made against a volunteer, a supply teacher, contractor or other person not directly employed by the College, the investigation must involve the organisation or agency of employment. For those who are self-employed, the allegation will be passed directly to the Oxfordshire Local Safeguarding Children Board for advice.

Should a decision be made to refer a case to social services, the parents of those involved will be informed. However should the DSL and Principal decide that to inform parents would increase the risk to the student no contact will be made and further legal and Student Protection advice will be taken.

Should a referral be made, the DSL should ask to be informed of the timing of the strategy discussions between the statutory agencies which will decide whether and how to investigate. The DSL should clarify with the investigating agencies when, how and by whom the parents and the student will be told that a referral has been made.