



CHILD PROTECTION ALLEGATIONS AGAINST STAFF

Managing Children's Evidence in Staff Disciplinary Investigations

Guidance for Local Authority Officers, Headteachers and Staff

March 2006

Published by:
The National Network
of Investigation & Referral
Support Co-ordinators.

Established by:
department for
education and skills
creating opportunity, releasing potential, achieving excellence

<u>Contents:</u>	Page
Introduction	3
1. The Legal Framework	4
2. Duty of Local Authorities and schools	4
3. Human Rights Act & Data Protection	4
3.1 Information Sharing	4
<i>Q How does the law on information sharing relate to disciplinary investigations?</i>	5
4. Employment Legislation	5
5. Obtaining children's evidence from different Investigative Processes	6
<i>Q. Should parents be present at an interview?</i>	6
<i>Q. At what age can a child be interviewed?</i>	7
<i>Q. Can a child choose someone other than his/ her parents or carers to support them?</i>	7
<i>Q. For how long can I interview a child?</i>	8
<i>Q. What if several children are involved in the disciplinary matter?</i>	9
<i>Q. How can I tell if a child is telling the truth?</i>	9
6. Children's Presence at Disciplinary Hearings	9

INTRODUCTION: children's evidence in disciplinary proceedings

This document contains guidance to managers who are involved with disciplinary investigations arising from an allegation made against a member of staff and who may need to obtain evidence from the child concerned or other child witnesses.

It is acknowledged that staff, upon hearing an allegation, may intuitively follow a procedure similar to any pupil disciplinary or pastoral matter and talk to the child or children about the subject of their concern. Any allegation made against a member of staff may lead to a criminal investigation and that process could be put in jeopardy if staff interpret wrongly previous guidance which states that “facts must be substantiated.” Similarly, any early interview of a child carried out by staff could give rise later to challenge about the procedures used within the disciplinary process.

The advice given in this document is based on a “no interview” principle – that is an interview with a child concerning an allegation against a member of staff should not normally take place unless such an interview can be justified by the need for information during a disciplinary investigation, which cannot be obtained from any another source.

Education staff should remember that they do **not** have a role that includes investigating the substance of an allegation until such time as agreement is reached with Social Care and the Police that it is a matter for the school to investigate under disciplinary proceedings.

Only once it has been decided that it is properly the responsibility of the school to progress the allegation under disciplinary procedures should consideration be given to undertaking any interviewing of the child/ren concerned.

The process for handling information received and how the information may be used for a disciplinary matter is given below as a brief overview. More detailed advice can be found in DfES/2044/2005:

- Allegation received
- Discussion held with Local Authority officer who may need to discuss with Social Care and/or the Police
- If Social Care or the Police need to consider the matter, a strategy or initial evaluation discussion will take place to agree how the matter should progress
- The strategy/initial evaluation discussion will decide if Social Care and/ or Police will investigate, in which case the Education service disciplinary proceedings will normally be held in abeyance.
- At this point the school should request that agreement be given to use any evidence provided by the child and obtained by the Police and/or Social Care for any subsequent disciplinary process, which may follow. If, at any stage in the process, it is agreed that this is a matter for the school to proceed with, a decision must be made as to whether the person against whom the allegation was made should be subject to disciplinary proceedings.
- If a disciplinary investigation is to be held then arrangements may then need to be made to interview the child or children if further information is justifiably needed.

1. The Legal Framework:

The process for managing allegations against staff is placed within a legal framework that encompasses both child protection and employment legislation and must have regard to Human Rights and Data Protection.

This guidance should also be read within the context of best practice according to the ACAS code of practice and employment law. Further specific advice is available from the Standards Board for England 'How to conduct an Investigation - Advice for Local Authorities on investigating allegations of misconduct':

<http://www.standardsboard.co.uk/Publications/Files/filedownload.3041.en.pdf>

It should be noted that references are made in this guidance to advice within Home Office guidance 'Achieving Best Evidence in criminal proceedings' (ABE)¹. The purpose of an 'ABE' interview and a disciplinary interview are different. The first is to establish whether abuse has taken place, whilst the second is to establish whether there has been misconduct. Interviews for disciplinary purposes must therefore be specific about the alleged breach of conduct they are to investigate.

2. Duty of Local Authorities and Schools

Section 175 of the Education Act 2002 places a duty on Local Authorities (Education functions) and on the governing bodies of schools and Further Education Institutions, to make arrangements for carrying out their functions with a view to safeguarding and promoting the welfare of children.

3. Human Rights Act and Data Protection

The two Human Rights Act Articles that apply are Articles 6 and 8:

- Everyone has the right to a fair and public hearing within a reasonable period of time. Everyone has the right to defend themselves²
- Everyone has the right to respect for his/her private and family life, home and correspondence and public authorities cannot interfere with this right except
 - For the prevention of disorder or crime
 - For the protection of health or morals
 - For the protection of the rights and freedoms of others³

3.1 Information Sharing:

Staff may be anxious about the legal or ethical restrictions on sharing information in relation to child protection or disciplinary matters. They should be aware of the law and comply with a code of conduct or other guidance applicable to the profession. These rarely provide an absolute barrier to disclosure. Staff should be prepared to exercise their judgement; a failure to pass on information that might prevent a tragedy could expose them to criticism in the same way as an unjustified disclosure.

¹ Achieving Best Evidence in Criminal Proceedings' Home Office guidance 2002 says any child under the age of 17 who is a victim of, or witness to, abuse can be interviewed provided they can give an account

² Human Rights Act Article 6

³ Human Rights Act Article 8

For the purposes of child protection, personal data, which should normally be kept confidential, can be disclosed if the person to whom it applies expressly or implicitly authorises it to be disclosed, or 'there is an overriding public interest in disclosure'.

Staff do not need express consent to disclose if they have reasonable grounds to believe that the person to whom the duty is owed understands and accepts that the information will be disclosed.

If they are in doubt as to whether a disclosure is authorised it is best to obtain express consent, but they do not need to do this if you think it would be contrary to a child's welfare⁴

How does the law on information sharing relate to disciplinary investigations?

Staff should always seek consent for any information or statements to be shared in disciplinary proceedings. This can be agreed with Police if they are formally investigating a matter at the beginning of this process, at the strategy meeting or initial evaluation discussion (see 'Introduction' and Section 5).

Experience has shown that many children who feel unable to give evidence to the police for the purpose of criminal proceedings may be willing to provide statements for disciplinary purposes. This is because they would not be required to give evidence in Court, and in exceptional circumstances statements can be anonymised, thus reducing the fear of repercussions

4. Employment Legislation

Disciplinary Procedures in relation to members of staff are referred to in a number of areas of Employment Legislation, and from April 2004 became part of the agreed Contract of Employment.

All schools should have adopted a Disciplinary Procedure and this will usually be provided to them by their Local Authority or personnel provider.

Disciplinary Procedures form part of the internal management process of a school and have a different legal status to Section 47 enquiries or Police Investigations. Disciplinary Procedures fall under domestic hearings.

The burden of proof in domestic hearings is that covered by civil law – decisions can be taken on the balance of probabilities, ie it is more probable than less that the employee committed the misconduct alleged.

Whereas the rules of natural justice would support that the individual should have a full opportunity to state their case and that information relied upon in any hearing should be provided in advance, there are particular issues that need to be considered in relation to children.

Witness statements do not need to be provided in advance of a hearing if the management considers that it would be unwise to do so in the particular circumstances of the person making the statement.

⁴ What to Do if You Are Worried a Child is Being Abused, DoH May 2003 Appendix 3

Natural justice will usually be served by communicating to the employee what has been said against them and giving them the opportunity to ask questions and receive responses in a written format. This should take place during the investigatory stage.

It will always be advisable to use information gathered in any Police or Social Care enquiry for the purpose of a disciplinary hearing rather than to interview the child. Every effort should be made to obtain such information from the relevant agencies.

5. Obtaining children's evidence for Disciplinary Proceedings:

If it is necessary to interview a child when information cannot be provided by Police or Social Care, or has not been gathered from elsewhere, you should endeavour to follow the guiding principles contained within Achieving Best Evidence Guidance. These seek to ensure minimal distress is caused to a child during an interview, which should be planned to take place at a time and place when no interruptions would occur.

Consent to interview the child needs to be obtained from the person with parental responsibility and/ or the child if they are of sufficient age and understanding to make this decision.

Practical arrangements such as a suitable venue and time need to be organised and the opportunity to be accompanied by a parent or responsible person should be offered to each child involved.

If, on rare occasions, evidence for disciplinary proceedings cannot be obtained from what the child has previously said, or written, a statement may be obtained from the child. This can be obtained during an interview, which should be conducted in such a way as to prevent undue stress being placed upon the child witness.

This interview needs to be well planned. Because it is very unusual for a young person to provide statements about a member of staff, particularly sensitive consideration needs to be given to the arrangements to interview the child.

Another means of securing evidence for disciplinary proceedings may be from the Police investigation. DfES guidance Safeguarding Children in Education: Dealing with Allegations of Abuse against Teachers and Other Staff (Ref DfES/0027/2005) confirms that 'wherever possible the Police should obtain consent from the individuals concerned to share the statements and evidence they obtain with the school for disciplinary purposes'. A request that this be made available to the school or Local Authority can be made by the Local Authority Allegations Manager, or other appropriate officer, at the time of the initial meeting, in order to guard against the need for a secondary interview of the child or children.

Should parents be present at an interview?

If the child is seen in relation to a statement for use in disciplinary proceedings then good practice would suggest that they should have a parent present. If the child is clear that he/she does not want a parent involved then the child can be seen alone or with another trusted adult, providing those with parental responsibility are aware and, in the case of younger children, agree beforehand

At what age can a child be interviewed?

It is important for education staff to consider whether an interview is likely to have a harmful impact on the child even though they are of an age and understanding, which allows them to communicate in some way, which gives an account.

“Achieving Best Evidence” makes it clear that any child under the age of 17 who is a victim of, or witnesses, abuse can be interviewed providing they can give an account. This guidance, which refers to formal child protection interviews where there are possible criminal implications, may be transferred to situations when a child is giving information to a potential disciplinary hearing

Can a child choose someone other than his/her parents or carers to support them?

Yes. A child may choose another adult if either the parents/ carers agree to this, or if the child is of sufficient age and understanding to make their views clear that this is what he/she wants even if the parents do not agree.

Consideration should be given to the interview being undertaken by someone who is experienced in communicating with children. Ideally, one person should take responsibility for interviewing the child and a second should note what they are saying, in their own words.

When interviewing children it is important to communicate in a way that is appropriate to their age, understanding and preference. This is especially important for disabled children and for children whose preferred language is not English. It may be helpful to seek more general information about the child, eg their developmental stage, their concentration span and how they relate to adults. This is in order that the interview achieves the most successful outcome in terms of obtaining evidence from the child whilst being as least stressful as possible.

Consideration should also be given to the variety of factors that may make it difficult for a child to talk. Guilt, shame, embarrassment, confusion and anger in relation to the allegation can impede a child from discussing it. Fearing this situation is their fault, thinking they are in trouble, concern about others' reactions, that they will be disbelieved, or fear of getting into trouble may also make a child resist speaking about it.

It is very important that anyone interviewing a child for disciplinary purposes should ensure they do so objectively, without preconceived ideas about the child or the person about whom the allegation has been made.

An interview with a child should normally consist of the following four main phases:⁵

- Establishing rapport
- Free narrative recall
- Questioning
- Closure

Establishing Rapport

During an interview with a child it is necessary to establish rapport in order to help the child feel at ease. This requires an explanation of the purpose of the meeting and encouraging the child to ask questions if he/she doesn't understand, or to say if they feel misunderstood.

⁵ Achieving Best Evidence in criminal proceedings. Home Office (2002)

Free Narrative Account

The core of the interview is to give the child the opportunity to provide as full an account as possible in his or her words and free from interruption.

The role of the interviewer is facilitator and not interrogator. Every effort should be made to obtain information from the child that is spontaneous and free from the interviewer's influence. The details of the child's account must be recorded and signed both by the interviewer and the child.

Questioning

Children vary in how much relevant information they provide in free narrative. However, in nearly all cases it will be necessary to expand on the child's initial account either to clarify or to elicit further information. This is best achieved through using open questions.

However it is important to guard against an over-use of questions as such a style may seem to the child like an interrogation and cause them to feel threatened.

Open Questions

Open questions invite the child to share openly his or her perceptions of what happened and are more likely to elicit information from the child. These questions are worded in a style that do not suggest an answer. For example "Can you tell me what happened?"

Closed questions

If specific, open questions prove unproductive, it may be necessary to use a closed question which invites the child to reply "yes" or "no". In replying to such a question, a child may respond without enlarging on their answer and in the absence of genuine memory, children may be tempted to guess. Closed questions should therefore be used to a minimum.

Leading Questions

Leading questions should be avoided. They are questions which are worded in such a way as to elicit the answer the questioner expects, for example "you must feel very upset about that, don't you?" implies an affirmative answer.

Closure

The child should read the statement or it should be read to him / her. The child should sign the notes as an agreed record of the meeting, or the person accompanying them should sign on their behalf. The notes should then be typed after which the child, or a parent, should have the opportunity to sign them.

It is important to acknowledge to the child the time and effort they have put in to the interview and to provide information about what will happen in the next stage of the process. It is also helpful if the interviewer spends some time discussing neutral topics before the end of the interview to help to reduce the stress of the situation.

If an interview time has been arranged, be careful about your appearance. You need the child or young person to be able to give good, clear information. Dressing very formally may inhibit their ability to relax and relate their information to you.

If possible, conduct interviews with children away from venues that are formal and associated with power imbalances within the school setting. An example of this would be the Headteacher's office.

Throughout an interview it can be helpful to paraphrase a child's account in order to check that your understanding is correct.

Children may not feel ready to speak fully when they first meet the interviewer. It is helpful to let them know that they can choose to speak to you, or add to their account at a later time, should they choose.

For how long can I interview a child?

A suggested guide to time could be taken from the Police who, when they interview a child, try to limit this to an hour maximum in order not to distress or tire a child too much, thereby adding to their ordeal.

What if several children are involved in a disciplinary matter?

It is important for the member of staff undertaking a disciplinary investigation to determine how many children are involved, which children are making an allegation and if there are other children who may be witnesses.

If there is more than one child involved it is very important to try to hear each child separately. This is because if children have spoken in front of each other their evidence can be said to have been contaminated by hearing what another child is saying.

If you allow children to speak at the same time they may also be tempted to embellish or cross check their own account with others.

How can I be sure the child is telling the truth?

Determining if someone is telling the truth is very difficult. There is no guaranteed and precise way of doing this. As a staff member listening to an allegation you should just take the information and seek advice.

You should be very careful to treat with caution a child's reputation for exaggeration or not telling the truth, or the previous esteem of the member of staff. It should be remembered that children who may have told untruths in the past are still capable of telling the truth about an incident, whilst a staff member who has a previous unblemished record could harm a child in particular circumstances.

6. Children's Presence at Disciplinary Hearings:

It is not a requirement of a disciplinary hearing that the member of staff, or their representative, has an opportunity to cross-examine the child. Therefore it is strongly recommended that children are **not** present at any hearing in relation to allegations against staff.

Some authorities have found it helpful to arrange for a member of staff to represent the child's views at the formal hearing. It is then possible, if the member of staff or their representative wish to ask the child questions, for these to be put to the child prior to the hearing in order that the child's representative can then relay the response at the disciplinary hearing.