



## BRIEFING PAPER

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# Safeguarding in English schools

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## Summary

Schools are an important part of the wider system for safeguarding children in England and are in a position to identify concerns early and prevent them from escalating. Under the *Education Act 2002*, maintained schools have a duty to carry out their functions with a view to safeguarding and promoting the welfare of their pupils. A similar requirement is placed on independent schools (which includes academies and free schools) by the Independent School Standards Regulations.

Statutory guidance published by the Department for Education, [\*Keeping children safe in education\*](#), provides information on what schools are required to do to meet their safeguarding responsibilities. In large part, this briefing summarises the guidance. It should not, however, be considered a substitute for it, or for professional legal advice, when looking for detailed guidance on specific cases. Related information on the duties on schools to prevent children from extremism and to promote British values is available in Library Briefing: [\*Counter-extremism policy in English schools\*](#).

### Responsibilities of governing bodies and school staff

As part of their safeguarding responsibilities, the governing bodies of maintained schools and the proprietors of independent schools are, among other things, responsible for ensuring that:

- There are appropriate safeguarding policies and procedures in place, including a child protection policy. Head teachers are responsible for ensuring that these policies are adopted and followed by all staff.
- A senior staff member is appointed as the designated safeguarding lead to take responsibility for safeguarding and child protection.
- All staff undergo safeguarding and child protection training at induction and that they receive regular updates.

School staff are expected to know about the systems in place in their school to support safeguarding, and to be aware of the types of abuse to look out for so that they can identify where action, including a referral to children's social care, may be needed. Section two of the briefing provides further information on the safeguarding responsibilities of governing bodies and school staff.

### Safe recruitment

Schools are required to adopt recruitment practices that help deter, reject or identify people who might abuse children. They should act reasonably when deciding on the suitability of new employees based on a range of information, including criminal record checks, barred list checks and prohibition checks, together with references and interview information. Section three of the briefing provides more detail on the recruitment checks that should be carried out.

### Allegations against school staff

Section four of the briefing provides information on how schools should manage allegations against a member of staff that might indicate that they pose a risk to children. The procedure followed will depend heavily on the circumstances of a particular case and can range from no action being taken, to a multi-agency strategy discussion, a criminal investigation and/or dismissal of the staff member concerned.

### Updated guidance

Following a consultation, revised *Keeping children safe in education* guidance will come into force from 3 September 2018. The main difference with the current guidance is the inclusion of a new section setting out principles for schools to consider when responding to reports of child on child sexual violence and sexual harassment. Until the revised guidance commences the version of *Keeping children safe in education* published in 2016 is still in force and is what schools must continue to have regard to. The final section of the briefing provides further information.

The briefing relates to the situation in England only.

# 1. Introduction

Local authorities in England have overarching responsibility for safeguarding and promoting the welfare of children in their area. As part of this, they have a number of statutory functions under the 1989 and 2004 Children Acts, including undertaking assessments of children who are in need or are suffering, or likely to suffer, significant harm in order to determine what services should be provided and what action should be taken.<sup>1</sup>

## Box 1: Local Safeguarding Children Boards (LSCBs)

Under section 13 of the *Children Act 2004* each local authority is required to establish an independent Local Safeguarding Children Board (LSCB) for their area. LSCBs have a range of functions, including:

- developing safeguarding policy concerning the actions to be taken when there are concerns about a child and the investigation of allegations against individuals who work with children;
- playing a strong role in supporting information sharing between organisations and requiring person or bodies to comply with requests for information;
- carrying out serious case reviews; and
- publishing an annual report on the effectiveness of child safeguarding in the area.<sup>2</sup>

LSCBs have an independent chair and comprise at least one representative from the local authority and a range of other partners, including, for example, the youth offending team, NHS trusts and Cafcass. Local authorities are additionally required to take reasonable steps to ensure that LSCBs include two lay members and representatives from all types of school in their area.<sup>3</sup>

LSCBs are set to be replaced with a new multi-agency safeguarding arrangements (see section 2.1 below).

While local authorities play the lead role, Government guidance stresses that effective safeguarding requires collaboration between local agencies, and that everyone who comes into contact with children has a role to play in “identifying concerns, sharing information and taking prompt action.”<sup>4</sup> In line with this, a range of local agencies, including the police and health services, have a duty under section 11 of the *Children Act 2004*, to ensure that they consider the need to safeguard and promote the welfare of children when carrying out their functions.<sup>5</sup>

This briefing sets out the role of schools within this wider safeguarding system, which is described in more detail in statutory guidance published by the Government: [Working together to safeguard children](#). It provides information on the safeguarding responsibilities of governing bodies, head teachers and individual staff; the inspection of safeguarding arrangements in schools; requirements relating to the recruitment of staff; and procedures for dealing with allegations against members of staff.

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<sup>1</sup> Further information on local authorities’ statutory safeguarding duties is provided in Library Briefing 6787, [An overview of child protection legislation in England](#), and in pages 17-51 of HM Government, [Working together to safeguard children](#), March 2015.

<sup>2</sup> HM Government, [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children](#), March 2015, pp65-75.

<sup>3</sup> As above, p68.

<sup>4</sup> As above, p9.

<sup>5</sup> As above, p5.

## 1.1 Changes to local multi-agency safeguarding arrangements

In October 2017, the Government launched a consultation on significant revisions to the statutory guidance, *Working together to safeguard children* to reflect changes made by the *Children and Social Work Act 2017*. In particular, the 2017 Act replaces Local Safeguarding Children Boards (LSCBs) with new local arrangements for safeguarding and promoting the welfare of children. A central feature of the new arrangements will be that three safeguarding partners – the local authority, NHS Clinical Commissioning Groups (CCGs), and police forces – will be responsible for determining how safeguarding arrangements should work in their area for them and relevant agencies. “Relevant agencies” is a term used for all bodies and groups within an area which play a crucial role in coordinating the safeguarding and welfare of children (such as schools). A full list of relevant agencies will be published in regulations.

The [Government response to the consultation](#) was published in February 2018. An updated version of *Working Together to Safeguard Children* will be published and the new safeguarding arrangements will come into effect following commencement of the relevant provisions of the *Children and Social Work Act 2017*. It is expected that this will be in “early summer.”<sup>6</sup> Local areas will have twelve months from the date of commencement to develop and publish their arrangements, and a further three months to implement them in full.<sup>7</sup>

### Position of schools in the new arrangements

The consultation noted the key role of schools in safeguarding children and proposed that the revised *Working together to safeguard children* guidance should include an expectation that all local safeguarding arrangements “contain explicit reference to how the safeguarding partners plan to involve, and give voice to, all local schools and academies in their work.”

A “significant number” of respondents to the consultation expressed the view that education should actually be included as a fourth safeguarding partner. The Government’s response acknowledged this but noted that the safeguarding partners are defined by the Act and statutory guidance cannot amend the structures set out in law. The response confirmed that the Government intended to include the proposed expectation in the guidance and added that the Government would “seek to give greater emphasis to the role of schools in the published guidance”.<sup>8</sup>

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<sup>6</sup> Department for Education, [Keeping children safe in education: Government response to consultation](#), May 2018, pp5-6.

<sup>7</sup> HM Government, [Changes to statutory guidance: Working Together to Safeguard Children; and new regulations: Government consultation response](#), February 2018, p36.

<sup>8</sup> HM Government, [Changes to statutory guidance: Working Together to Safeguard Children; and new regulations: Government consultation response](#), February 2018, p5.



## 2. Safeguarding in schools

In line with the duty placed on other agencies by the *Children Act 2004*, section 175 of the *Education Act 2002* requires governing bodies of maintained schools to ensure that they carry out their functions with a view to safeguarding and promoting the welfare of their pupils who are under 18 years of age. A similar duty is placed on the proprietors of independent schools (which includes academies and free schools) by the Independent School Standards Regulations.<sup>9</sup>

(Unless otherwise stated, any reference to schools in this briefing refers to all schools. Similarly, any references to governing bodies should be taken also to refer to the proprietors of independent schools (i.e. the persons responsible for the school's management) unless otherwise stated).<sup>10</sup>

Statutory guidance published by the Department for Education, [Keeping children safe in education](#) (hereafter referred to as the guidance), defines safeguarding and protecting the welfare of children as:

- protecting children from maltreatment;
- preventing impairment of children's health or development;
- ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and
- taking action to enable all children to have the best outcomes.<sup>11</sup>

The guidance provides information on what schools should do to meet their safeguarding responsibilities and sets out the legal duties that they must comply with. A brief summary is provided in the sections below.

### 2.1 Responsibilities of governing bodies

Governing bodies of schools are responsible for ensuring that there are appropriate safeguarding policies and procedures in place, including a child protection policy, a staff behaviour policy and a code of conduct. The child protection policy should set out procedures in line with Government guidance and should refer to inter-agency procedures put in place by the Local Safeguarding Children Board (LSCB). It should be updated annually and be publicly available. Head teachers are responsible for ensuring that the policies and procedures adopted by the governing body are followed by all staff.<sup>12</sup>

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<sup>9</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p14; The [Education \(Independent School Standards\) Regulations 2014](#), SI 2014/3283.

<sup>10</sup> *Education Act 1996*, section 579(1).

<sup>11</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p5. The same definition is used in the statutory guidance on the wider safeguarding system: HM Government, [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children](#), March 2015, p5.

<sup>12</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p15.

Other safeguarding responsibilities of governing bodies include ensuring (this list is not exhaustive):

- That there is a senior board level lead who takes leadership responsibility for the school's safeguarding requirements.<sup>13</sup>
- That a senior staff member is appointed as the designated safeguarding lead to take responsibility for safeguarding and child protection, discuss safeguarding concerns with staff, and to work with the local authority and other agencies.<sup>14</sup>
- That the school contributes to inter-agency working and sees the need for information sharing between professionals and agencies.<sup>15</sup> Further detail on information sharing is available in [advice published by the Government](#).
- That all staff undergo safeguarding and child protection training at induction and that they receive regular safeguarding and child protection updates.<sup>16</sup>
- That there are clear whistleblowing procedures in place.<sup>17</sup>
- That appropriate filters and monitoring systems are in place for online content.<sup>18</sup>
- That children are taught about safeguarding, which may include covering relevant issues in Personal, Social, Health and Economic Education (PSHE) and/or Sex and Relationships Education.<sup>19</sup>
- That a designated teacher is appointed to promote the educational achievement of looked after children. As part of this, they will work with the local authority's virtual school head<sup>20</sup> to discuss how pupil premium funding for looked after children will be used.<sup>21</sup>

## 2.2 Responsibilities of staff

School staff have an important safeguarding role as they can be in a position to identify concerns early and prevent them from escalating. The guidance, which staff are expected to read part one of, states that they should be aware of the systems in place in their school to support safeguarding, including the child protection policy and the role of the designated safeguarding lead. They are additionally expected to be aware of early help processes and to be prepared to identify children

<sup>13</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p14.

<sup>14</sup> As above, pp15-16.

<sup>15</sup> As above.

<sup>16</sup> As above, p17.

<sup>17</sup> HM Government, [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children](#), March 2015, pp53 & 55.

<sup>18</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, pp17 and Annex C.

<sup>19</sup> As above, p18.

<sup>20</sup> The *Children and Families Act 2014* requires local authorities to appoint a person (a virtual school head) for the purpose of discharging the authority's responsibility to promote the educational achievement of looked after children.

<sup>21</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p20.



who may benefit from it. In the first instance, early help requirements should be discussed with the designated safeguarding lead.<sup>22</sup>

### Box 2: Early help

The guidance describes early help as “providing support as soon as a problem emerges, at any point in a child’s life.” It adds that effective early help relies on agencies working together to:

- **Identify children that would benefit from early help.** Professionals should be alert to the potential need for early help for children with particular characteristics, such as special educational needs or caring responsibilities.
- **Undertake assessments of the need for early help.** Where a child would benefit from coordinated support from more than one agency (e.g. education, health, housing etc) there should be an inter-agency assessment carried out, undertaken by a lead professional, such as a GP, teacher, or family support worker. The assessment should identify the help required to prevent needs escalating to the point where a statutory assessment by the local authority is required.
- **Providing targeted services.** Local areas should have a range of services in place to address assessed needs early. In addition to support in universal services, specific early help services will typically involve family and parenting programmes, assistance with health issues and help for problems relating to drugs, alcohol and domestic violence.<sup>23</sup>

## Raising concerns

School staff are expected to adopt a “it could happen here” attitude and to be aware of the types of abuse to look out for so that they can identify where help may be needed.<sup>24</sup> Information on types of abuse and neglect is provided in paras 35-44 of the guidance and in advice published by the Government: [What to do if you are worried a child is being abused – Advice for practitioners](#).

If a staff member has concerns about a child (as opposed to a child being in immediate danger) then they need to decide what action to take. Where possible this should be discussed with the designated safeguarding lead but any staff member can make a referral to children’s social care; other options could include referral to specialist services or early help services. The local authority should make a decision regarding the action to be taken within one working day of a referral and this should be communicated to the person who made the referral. If the child’s situation does not improve, then the designated safeguarding lead or the person who made the referral should press for re-consideration. Further information on the referral process is provided by paragraphs 21 to 27, and a flow chart on page 10, of guidance.

If a child is in immediate danger or is at risk of harm then a referral should be made to children’s social care and/or the police immediately. Similarly, if a teacher discovers that an act of female genital mutilation appears to have been carried out on a girl under the age of 18, this must be reported to the police.<sup>25</sup>

<sup>22</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, pp5-6.

<sup>23</sup> HM Government, [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children](#), March 2015, pp12-17.

<sup>24</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p7.

<sup>25</sup> As above, p8.

Staff members with concerns about another member of staff should refer them to the head teacher or, if the concerns are about the head teacher, to the chair of governors. Staff may consider discussing the matter with the designated safeguarding lead and making referrals via them. There should also be appropriate whistleblowing procedures for staff who have concerns about the safeguarding practices in their school. The guidance notes that staff should feel able to raise concerns and that they will be taken seriously by the senior leadership team.<sup>26</sup>

### Box 3: Sexual violence and sexual harassment between children in schools

In December 2017, the Department for Education published [advice](#) for schools on sexual violence and sexual harassment between children in schools. The advice was updated in May 2018.

The advice provides information for schools on what sexual violence and harassment is; what schools' and colleges' legal responsibilities are; and how schools should respond to reports of sexual violence and harassment.

In addition, the [revised Keeping children safe in education guidance](#), which is set to come into force from 3 September 2018 (see section 5), includes a new section setting out principles for schools to consider when responding to reports of child on child sexual violence and sexual harassment.

Further information on this area is available in Library Briefing 8117, [Sexual harassment in education](#).

## 2.3 Out of school education settings

Following earlier announcements, in November 2015 the Department for Education published a call for evidence on the registration and inspection of out-of-school education settings. The call for evidence set out the following proposals to allow action to be taken where settings are failing to safeguard and promote the welfare of children:

- A requirement on settings providing intensive education to register, so that there is transparency about where settings are operating;
- A power for a body to inspect settings to ensure that children are being properly safeguarded; and
- A power to impose sanctions where settings are failing to safeguard and promote the welfare of children, which could include barring individuals from working with children and the closure of premises.<sup>27</sup>

The call for evidence stated that the proposed system would apply to settings providing "intensive tuition", which would likely be defined as those which a child attends for more than 6-8 hours a week.<sup>28</sup>

The 2016 Queen's Speech announced that a *Counter-Extremism and Safeguarding Bill* would be introduced that would include provision to intervene in out-of-school settings. However, the Bill was not introduced by the time Parliament dissolved ahead of the 2017 general election.

<sup>26</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p9.

<sup>27</sup> Department for Education, [Out-of-school education settings: call for evidence](#), November 2015, p7.

<sup>28</sup> Department for Education, [Out-of-school education settings: call for evidence](#), November 2015, pp7 & 10.

Further information, including reaction to the proposals is provided in section 2.6 of Library Briefing 7345, [Counter-extremism policy in English schools](#).

## Report on the call for evidence

In April 2018, the Government published a report on the call for evidence. The report stated that the Government did not intend to proceed with the proposals outlined in the initial call for evidence, but instead would collect evidence with future legislation a potential option.

The following next steps were identified:

- Sharing new best practice for intervening in cases of concern.
- Developing the evidence base and identifying any gaps in existing powers.
- Consulting on a voluntary code of practice for providers later in 2018.
- Working with local authorities to provide more advice for parents about out-of-school settings.<sup>29</sup>

### Box 4: Children missing education

Governing bodies should put in place safeguarding responses to children who go missing from education to help identify the risk of abuse and neglect and to prevent them going missing in the future. Further information is provided in guidance published by the Department for Education: [Children missing education](#). The guidance sets out the roles of local authorities and schools in this regard:

- Local authorities have a duty to establish, as far as is possible to do so, the identities of children of compulsory school age who are missing education in their area.
- Schools should monitor attendance and address it when it is poor or irregular.
- All schools must inform the local authority, at intervals agreed with the authority, of any pupil who fails to attend school regularly or has been absent without the school's permission for a continuous period of 10 days or more.

Schools are also required to inform the local authority when a pupil's name is to be deleted from the admissions register under any one of a number of grounds prescribed in regulations.<sup>30</sup> When doing so, they must provide the authority with certain information, including the name and address of the parent where the child is going to live and, if applicable, the name of the child's destination school.<sup>31</sup>

## 2.4 Boarding schools and residential special schools

There are additional safeguarding requirements for boarding schools and residential special schools, which are set out in National Minimum Standards:

- [The National Minimum Standards for Boarding Schools](#)
- [The National Minimum Standards for Residential Special Schools](#)

<sup>29</sup> Department for Education, [Out-of-school education settings Report on the call for evidence conducted November 2015 to January 2016](#), April 2018, p19.

<sup>30</sup> The Education (Pupil Registration) (England) Regulations 2006, SI 2006/1751.

<sup>31</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016.

The *Keeping Children Safe in Education* guidance highlights these minimum standards and notes some factors that boarding schools have to be particularly aware of with regards to safeguarding, including being alert to inappropriate pupil relationships and the potential for peer on peer abuse.<sup>32</sup>

### 2.5 Inspections

Ofsted's [common inspection framework](#) sets out that while inspectors will not provide a separate numerical grade for a school's safeguarding work, they will "always make a written judgement under leadership and management about whether or not the arrangements for safeguarding children and learners are effective."<sup>33</sup>

Additional guidance published by Ofsted in October 2016, [Inspecting safeguarding in early years, education and skills settings](#), provides information on the points that inspectors consider when inspecting safeguarding.<sup>34</sup>

#### Independent schools

Ofsted normally only inspects those independent schools in England that are not members of associations (around half of the total).<sup>35</sup>

However, it can also conduct emergency inspections of independent schools that are members of associations if requested to do so by the Department for Education. This could happen, for example, following a complaint or information which appears to raise a concern about the safeguarding of pupils.<sup>36</sup>

There are two independent inspectorates which inspect independent schools that do belong to an association: the [School Inspection Service](#), and the [Independent Schools Inspectorate](#). Both inspectorates inspect safeguarding and have published handbooks which set out their approach:

- School Inspection Service, [The handbook for inspecting independent schools](#).
- Independent Schools Inspectorate, [Handbook for the inspect of schools: inspection framework](#).

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<sup>32</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p20.

<sup>33</sup> Ofsted, [The Common inspection framework: education, skills and early years](#), August 2015, p6.

<sup>34</sup> Ofsted, [Inspecting safeguarding in early years, education and skills settings](#), August 2016.

<sup>35</sup> Ofsted also inspects independent schools that are members of the Christian Schools' Trust or the Association of Muslim Schools. These schools were previously inspected by the Bridge Schools Inspectorate.

<sup>36</sup> [How Ofsted inspects non-association independent schools](#), Ofsted, last updated 1 September 2015.

## 3. Staff recruitment

The *Keeping children safe in education* guidance states that schools should “create a culture of safe recruitment” and “adopt recruitment procedures that help deter, reject or identify people who might abuse children.”<sup>37</sup>

The guidance sets out that governing bodies are required to act reasonably when deciding on the suitability of new employees based on evidence including criminal record checks (DBS checks), barred list checks and prohibition checks, together with references and interview information.<sup>38</sup> Governing bodies of maintained schools are additionally required, under the *School Staffing (England) Regulations 2009*, to ensure that at least one person on any appointment panel has undertaken safer recruitment training.<sup>39</sup>

This section provides brief information on the checks that schools are required to undertake when recruiting staff. Much more detailed information is set out in part three of the *Keeping children safe in education guidance*.

### 3.1 DBS Checks

The Disclosure and Barring Service (DBS) carries out criminal record checks for specific positions, professions and employment. There are three levels of DBS check available:

- **Standard:** this provides information about convictions, cautions, reprimands and warnings held on the Police National Computer (PNC), regardless or not of whether they are spent under the *Rehabilitation of Offenders Act 1974*. The law allows for certain old and minor matters to be filtered out;
- **Enhanced:** This provides the same information as a standard check, plus any additional information held by the police which a chief officer reasonably believes to be relevant and considers ought to be disclosed; and
- **Enhanced with barred list check:** where people are working or seeking to work in regulated activity with children, this allows for an additional check to be made as to whether the person appears on the [children’s barred list](#).<sup>40</sup>

Once the checks are complete, the DBS sends a certificate to the applicant, who must show it to their potential employer before they take up employment or as soon as practicable afterwards.

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<sup>37</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p22.

<sup>38</sup> As above.

<sup>39</sup> As above, p18. If concerns arise about an existing member of staff, schools should carry out all the relevant checks as if they were a new staff member.

<sup>40</sup> As above, p24.

## What schools should do

The level of DBS certificate that a school should require depends on the role and duties of the potential staff member, in particular whether they will be undertaking regulated activity (see box 5). If an individual will be involved in regulated activity, which will be the case most of the time in schools, then an enhanced DBS certificate with barred list check will be required. If they will not be involved in regulated activity but will have regular contact with children (for example, contractors on occasional contracts) then an enhanced DBS certificate without barred list check may be appropriate.

If a school allows an individual to start work in regulated activity before a DBS certificate is available, they should ensure that the individual is supervised and that all other checks, including a separate barred list check, have been completed. It is an offence for a school to allow a person to carry out regulated activity if they know or have reason to believe that the person is barred.<sup>41</sup>

### Box 5: Regulated activity

Regulated activity is work that a person who is on a barred list cannot do. Its full legal definition is set out in Schedule 4 of the *Safeguarding Vulnerable Groups Act 2006*, as amended. In summary, a person is deemed to be engaged in regulated activity if, as part of their work, they:

- will be responsible, on a regular basis in a school or college, for teaching, training instructing, caring for or supervising children; or
- will carry out paid, or unsupervised unpaid, work regularly in a school or college where that work provides an opportunity for contact with children; or
- engage in intimate or personal care or overnight activity, even if this happens only once.<sup>42</sup>

Further information is available on page 24 of the *Keeping children safe in education* guidance and in a factual note published by the Government: [Regulated activity in relation to children: scope](#).

## 3.2 Teacher prohibition orders

Teacher prohibition orders prevent a person from carrying out teaching work in schools and colleges. They are made by the Secretary of State following consideration by a professional misconduct panel convened by the Teaching Regulation Agency (TRA). See box 9 for further information.

### Box 6: Teaching Regulation Agency

The National College for Teaching and Leadership (NCTL) was previously responsible for the regulation of the teaching profession, including the convening of professional misconduct panels. In November 2017, however, the Department for Education announced that the NCTL would close from April 2018 and a new executive agency, the Teaching Regulation Agency, would take on the NCTL's functions relating to the regulation of the teaching profession. The NCTL's functions relating to teacher recruitment have been merged into the Department for Education.<sup>43</sup>

<sup>41</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, pp22-5.

<sup>42</sup> As above, p22.

<sup>43</sup> National College for Teaching and Leadership, [TSM and initial teacher training allocations: 2018 to 2019](#), last updated 30 November 2017.



In addition to obtaining the necessary DBS certificate, anybody carrying out teaching work in England needs to undergo an additional check that they are not subject to a teacher prohibition order. Checks on prohibition can be carried out using the [Teacher Services' system](#).

Further information is available in the TRA publication: [Teacher misconduct: the prohibition of teachers](#).

### Box 7: Disqualification by association

Under the *Childcare (Disqualification) Regulations 2009* an individual may be disqualified from being employed in early years provision if they have been (among other things):

- found to have committed a relevant offence against a child
- made subject to an order removing a child from their care; or
- found to have committed certain offences against an adult – for example, murder, kidnapping, rape, or indecent assault.

Under the regulations, a person may also be disqualified if they live in the same household as another disqualified person or if they live in a household where a disqualified person is employed. This is referred to as 'disqualification by association'.<sup>44</sup>

[Statutory guidance](#) published by the Department for Education clarifies the requirements placed on schools by the regulations. Among other things, the guidance states that:

- School staff affected by the regulations include:
  - those who provide care for any child up to and including reception age, including education in reception classes; and
  - those employed to work in childcare provided by the school outside of school hours for children above reception age but under the age of 8.
- Schools must ensure that they are not knowingly employing a person who is disqualified under the regulations.
- In addition to making relevant staff aware of the legislation, schools need to gather sufficient information about whether any member of staff is disqualified by association.<sup>45</sup>

Schools must not continue to employ an individual who is disqualified, including by association, unless they have received a waiver from Ofsted which covers the role they wish to undertake. Further information on applications for waiving disqualifications is provided in guidance published by Ofsted:

[Applying to waive disqualification: early years and childcare providers](#)

## 3.3 Pre-appointment checks

In addition to obtaining the correct DBS certificate (including barred list check if required) and ensuring that a candidate to be employed as a teacher is not subject to a prohibition order, schools should carry out a number of other pre-appointment checks. These include, but are not limited to:

- Verifying identity and right to work in the UK.
- Checking that previous employment history is not contradictory or incomplete.
- Verifying professional qualifications.
- Scrutinising any concerns with references.

<sup>44</sup> [Childcare \(Disqualification\) Regulations 2009](#), SI 2009/1547; Ofsted, [Applying to waive disqualification: early years and childcare providers](#), June 2015, pp4-5.

<sup>45</sup> Department for Education, [Disqualification under the Childcare Act 2006](#), June 2016, pp5-11.

- Verifying the candidate's mental and physical fitness to carry out their work responsibilities.

In addition, section 128 of the *Education and Skills Act 2008* provides for the Secretary of State to direct that a person may be prohibited or restricted from participating in the management of an independent school (which includes academies and free schools). Where relevant, schools should check that a potential employee is not prohibited under section 128 provisions, which can be done using the [Teacher Services' system](#).<sup>46</sup>

#### Box 8: Individuals not employed by the school

A number of staff who work at, or are otherwise present at, a school may not be recruited by the school directly. The procedures in place for such situations are set out in the [Keeping children safe in education guidance](#), including for:

- **Agency staff:** schools must obtain written notification from the agency that they have carried out the required checks on an individual who will be working at the school.
- **Teacher trainees:** where the trainee is paid a salary, the school must carry out the required checks. Where the trainee pays tuition fees, the initial teacher training provider must carry out the checks.
- **Volunteers:** the level of checks required depends on the role, in particular whether the individual will be undertaking regulated activity (see box 4).
- **Visitors:** schools do not have the power to request DBS checks for visitors. Head teachers should use their judgement about the need to escort them.<sup>47</sup>

Further information, including for other categories of non-school staff, is provided on pages 33-39 of the guidance.

### 3.4 Record keeping

Schools are required to keep a single central record which covers all staff who work at the school and records whether the necessary checks (e.g. DBS, barred list, identity etc) have been carried out. For academies and independent schools the central record must also include this information for all members of the proprietor body. It is not necessary for schools to keep copies of DBS certificates for the purposes of maintaining the single central record.<sup>48</sup>

<sup>46</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p23.

<sup>47</sup> As above, pp33-9.

<sup>48</sup> As above, pp31-2.

## 4. Allegations against staff

Schools, along with other bodies, should have clear policies for dealing with allegations against staff members. A clear distinction should be made in such policies between an allegation, a concern about the quality of care or practice and a complaint.<sup>49</sup>

Part four of the [Keeping children safe in education](#) guidance provides information for schools on how to manage allegations against a member of staff that might indicate that they “would pose a risk of harm if they continue to work in regular or close contact with children in their present position, or in any capacity.” The guidance should be used in all cases where it is alleged that a current member of staff (including volunteers) has:

- behaved in way that has harmed a child, or may harm a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm to children.<sup>50</sup>

Allegations against a former member of staff should be referred to the police.<sup>51</sup>

This section provides a brief outline for the process for handling allegations as set out in the guidance. Individuals who are the subject of allegations would be advised to contact their union representative and/or seek legal advice. Library Briefing 2830, [Legal advice and help in employment matters](#), gives possible sources of advice in employment matters.

### 4.1 Initial considerations and investigation

The guidance states that the procedure for investigating allegations needs to be applied with common sense. For example, cases that do not meet the criteria outlined above, or do not warrant enquiries by local authority children’s social care services, should be resolved without delay following local arrangements. On the other hand, some cases may be so serious that immediate intervention by children’s social care and/or the police is required.<sup>52</sup>

In the first instance, the school’s head teacher<sup>53</sup> (the case manager) should discuss the allegation with the designated officer from the local authority and agree a course of action.<sup>54</sup> The designated officer will

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<sup>49</sup> HM Government, [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children](#), March 2015, p54 & 55.

<sup>50</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p40.

<sup>51</sup> As above.

<sup>52</sup> As above.

<sup>53</sup> Where the head teacher is the subject of the allegation, the chair of governors or proprietor of an independent school should act as the case manager.

<sup>54</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, pp40-1.

provide advice and guidance to the case manager and will liaise with the police and other agencies if needed.<sup>55</sup>

The course of action following the initial evaluation will depend on the circumstances of the case. For example:

- Where it is determined that the allegation does not involve a possible criminal offence then it is for employer to deal with. If there are concerns about child protection, however, then these should be discussed with the designated officer.
- Where police/social care investigation is not needed then the local authority's designated officer will discuss next steps with the case manager. In such cases, the options taken will depend on the particular circumstances and can range from taking no further action to dismissal.
- A strategy discussion, involving local authority children's social care, the school, the police, health and other bodies, will be convened if there is cause to suspect children are suffering or likely to suffer significant harm. Further information about strategy discussions is available on pages 36-37 of the [Working together to safeguard children](#) guidance.
- In some cases, further enquiries will be needed. In straightforward cases this investigation can be done by a senior member of school staff. In other cases, an independent investigator may be needed. Independent investigators can be included as part of the personnel services that maintained schools can buy from their local authority.

The guidance notes that if an allegation concerns the use of physical violence then the initial evaluation (and any subsequent strategy discussion) should consider that school staff are entitled to use reasonable force to control or restrain children, including to deal with disruptive behaviour.<sup>56</sup>

## 4.2 Suspension

In some cases, the possible risk of harm to children may require the accused person to be suspended until the case is resolved. The power to suspend is with the governing body of the school. While appropriate weight should be given to their advice, children's social care or the police cannot require suspension.<sup>57</sup>

The guidance stresses that suspension should not be a default response and should only be considered where there is reason to suspect that a child is at risk of harm, or the case is so serious that there may be grounds for dismissal. It adds that all other possible alternatives should be considered prior to suspension until the allegation is resolved, including:

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<sup>55</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p45.

<sup>56</sup> As above, pp42-5.

<sup>57</sup> As above, p48.

- Redeployment within the school so the accused has no direct contact with the child concerned.
- Ensuring that there is an assistant present when the accused has contact with children.
- Moving the child concerned so that they have no lessons with the accused.

Where a decision to suspend is made, written confirmation giving as much detail about the reasons should be given within one working day to the accused. They should also be provided with a named contact within the organisation and not left without support.

Where it is decided following an investigation that the suspended person can return to work they should be supported – for example, through a phased return and/or the provision of a mentor.<sup>58</sup>

### 4.3 Outcomes

The following definitions should be used when determining the outcome of abuse allegations:

- **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.

Schools may also wish to use the additional definition of 'unfounded' to reflect cases where there is no evidence or proper basis which supports the allegation being made. This definition might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw.<sup>59</sup>

The guidance stresses the importance of making every effort to reach a conclusion in all cases bearing on the safety of children, even if the accused does not cooperate. Similarly, the resignation of the accused should not prevent an allegation being followed up and a referral to DBS must still be made if the criteria are met. Settlement agreements, where a person agrees to resign if their employer agrees not to pursue disciplinary action, should not be used in cases where the accused refuses to cooperate or resigns before their notice period expires.<sup>60</sup>

### Substantiated allegations

If the allegation is substantiated and the person is dismissed, then the designated officer should discuss with the case manager whether the school will make a referral to DBS for consideration of whether inclusion

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<sup>58</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, pp47-50.

<sup>59</sup> As above, p41.

<sup>60</sup> As above, p45.

on the barred list is required. In cases involving teaching staff, it should also be discussed whether to refer the case to the Teaching Regulation Agency (TRA) to consider prohibiting the individual from teaching.<sup>61</sup>

### Box 9: Teaching Regulation Agency investigations of teacher misconduct

The Teaching Regulation Agency (TRA) is responsible for investigating allegations of serious misconduct against teachers in schools in England. If deemed appropriate, the TRA can recommend that a teacher is prohibited from teaching in schools through the issuing of a teacher prohibition order.

A [series of TRA publications](#) provide information and advice on how cases of alleged serious misconduct are dealt with by the TRA, including:

- Information on when an employer should refer a case to the TEA: [Referrals by employers](#)
- A guide for teachers subject to disciplinary procedures: [Teacher misconduct: information for teachers](#).
- Advice on the factors the TRA considers when deciding whether to bar a teacher: [Teacher misconduct: The prohibition of teachers](#) (in particular, pages 6-11).
- More general information on how the TRA regulates teacher misconduct: [Teacher misconduct: regulating the teaching profession](#).

It is a legal requirement for employers to make a referral to DBS where they think the individual has engaged in conduct that harmed or is likely to harm a child, or where they think the person otherwise poses a risk to children. DBS will consider whether to bar the person.<sup>62</sup> Schools must also have procedures to make a referral to DBS if a person in regulated activity has been dismissed or removed due to safeguarding concerns or if they would have been had they not resigned. Failure to make a referral to DBS when the criteria is met is a criminal offence.<sup>63</sup>

In substantiated cases, the designated officer should also review the circumstances with the case manager to determine if improvements to the school's procedures could be made in order to prevent a similar event occurring again and to see if any lessons can be learned.<sup>64</sup>

## Unsubstantiated or malicious allegations

If the allegation is found to be unsubstantiated or malicious then the designated officer should refer the matter to children's social care services to determine if the child concerned is in need of services or if they could have been abused by somebody else. If the allegation is shown to be deliberately malicious, then the head teacher should consider what disciplinary action may be needed against the child.<sup>65</sup>

## Criminal investigations

Following a criminal investigation or prosecution, the police should inform the school and the designated officer immediately when it is complete or it has been decided to close the investigation. If it has been decided to close the case without charge then the designated officer and the case manager should discuss whether any further action is needed. Options again depend on the circumstances and "will need to

<sup>61</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, p49.

<sup>62</sup> As above, pp49 & 34.

<sup>63</sup> As above, p19.

<sup>64</sup> As above, p50.

<sup>65</sup> As above, p50.



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.”<sup>66</sup>

## 4.4 Record keeping

Details of malicious accusations are removed from the personnel records of the accused. For all other allegations, a clear and comprehensive summary of the allegation, how it was followed up and how it was resolved should be kept on the personnel file of accused.<sup>67</sup> The guidance explains why such a record is kept even in the case of allegations that are found to be false:

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.<sup>68</sup>

Cases where an allegation is proven to be false, unsubstantiated or malicious should not be included in references.<sup>69</sup>

## 4.5 Supporting the accused

Noting the duty of care they have to their staff, the guidance stresses that employers should provide effective support to anyone facing an allegation and should act to “minimise the stress inherent in the allegations process.”<sup>70</sup> It further states that:

- Allegations should be dealt with quickly, in a way that provides effective protection for the child and supports the person who is the subject of the allegation.
- Whenever possible the accused should be given the opportunity to answer the allegation and make representations about it.
- Individuals should be informed of allegations as soon as possible and given an explanation of the likely course of action, unless this is objected to by the police or children’s social care. They should also be advised to contact their trade union representative.
- The case manager should appoint a named representative to keep the accused informed about progress and to consider what other support may be appropriate (for example, occupational health for staff in maintained schools).<sup>71</sup>

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<sup>66</sup> Department for Education, [\*Keeping children safe in education: Statutory guidance for schools and colleges\*](#), September 2016, p49.

<sup>67</sup> As above p45.

<sup>68</sup> As above, p45.

<sup>69</sup> As above, p46.

<sup>70</sup> As above, p40.

<sup>71</sup> As above, pp40-5.

## 4.6 Confidentiality

Reporting restrictions introduced by the *Education Act 2002* prevent the publication of material that may lead to the identification of a teacher who has been accused by a pupil from the same school. This restriction, which includes publishing material on social network sites, applies until the accused is charged with an offence. The guidance notes this restriction and states that it is important that schools make “every effort” to maintain confidentiality when an allegation is made.<sup>72</sup>

The parents of children involved in an allegation should be told as soon as possible (but only after the strategy discussion if one is thought necessary), and should be kept informed of progress and informed of the outcome. Deliberations of a disciplinary hearing cannot normally be disclosed, but the parents should be told the outcome in confidence. The guidance additionally states that parents should be made aware of the requirement to maintain confidentiality while investigations are ongoing.<sup>73</sup>

## 4.7 Timescales

The guidance acknowledges that the time taken to resolve allegations will depend on the circumstances. However, it states that cases should be dealt with as quickly as possible and sets out the expectation that 80% of cases should be resolved within one month, 90% should be resolved within three months, and “all but the most exceptional” should be resolved within 12 months. The guidance adds that cases where it is immediately clear that the allegation is unsubstantiated or malicious should be resolved within one week.<sup>74</sup>

## 4.8 Allegations against other children

As well as policies for how to deal with allegations against staff members, governing bodies should also ensure that the school’s child protection policy includes procedures to minimise the risk of pupil-on-pupil abuse and sets out how allegations will be investigated and dealt with.

Governors should also ensure that sexting, and the school’s approach to it, is reflected in the child protection policy. Further guidance is available in [advice on searching, screening and confiscation](#) published by the Department for Education and in [sexting advice for schools and colleges](#), published by the UK Council for Child Internet Safety Education Group.<sup>75</sup>

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<sup>72</sup> Department for Education, [Keeping children safe in education: Statutory guidance for schools and colleges](#), September 2016, pp43-4.

<sup>73</sup> As above, p43.

<sup>74</sup> As above, p45.

<sup>75</sup> As above, p19.

## 5. Updated safeguarding guidance for schools

In December 2017, the Government launched a [consultation](#) on proposed changes to the statutory guidance, *Keeping children safe in education*. The consultation also sought views on a new departmental advice document covering sexual violence and sexual harassment between children in schools (see box 3 above).

The Government published its [response to the consultation](#) in May 2018, alongside [a draft of revised \*Keeping children safe in education\* guidance for information](#). The revised guidance commences on 3 September 2018. Until this time, the version of *Keeping children safe in education* published in 2016 is still in force and is what schools must continue to have regard to.

Many of the changes in the revised guidance are technical in nature and were made in response to requests from schools and others for additional clarification. The most significant revision is the inclusion of a new section setting out principles for schools to consider when responding to reports of child on child sexual violence and sexual harassment.

Other changes to the guidance include:

- The inclusion of additional information on early help.
- Making clearer that where staff have a safeguarding concern they should act on it immediately.
- The inclusion of a new requirement for schools to hold more than one emergency contact number for pupils where reasonably possible.<sup>76</sup>

The consultation response also included a Government commitment to establish an online safety working group to consider how online safety advice can be further integrated throughout the statutory guidance.<sup>77</sup>

The revised version of *Keeping children safe in education* has not been updated to reflect the new multi-agency safeguarding arrangements (see section 1.2). The Government's consultation response explained that, subject to parliamentary clearance of the regulations, a revised version of the *Working together to safeguard children* statutory guidance will be published in early summer. When the *Keeping children safe in education* guidance is published and comes into force on 3 September 2018, the response said, it will be "fully reflective of schools...role in the new safeguarding partner arrangements."<sup>78</sup>

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<sup>76</sup> For further information, see: See [HCWS6963](#), 17 May 2018.

<sup>77</sup> [Strengthened guidance for schools and colleges on safeguarding](#), Department for Education, 17 May 2018.

<sup>78</sup> Department for Education, [Keeping children safe in education: Government response to consultation](#), May 2018, pp5-6.

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