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Children, Schools and Families
Committee

Allegations Against School Staff

Fifth Report of Session 2008–09

*Report, together with formal minutes, oral and
written evidence*

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The Children, Schools and Families Committee

The Children, Schools and Families Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Children, Schools and Families and its associated public bodies.

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Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
2 The scale and nature of allegations	6
The nature of allegations	6
The number of allegations	7
The impact of allegations	9
3 The investigatory process	10
The first stages of investigation	14
The role of the local authority	15
The role of Local Safeguarding Children Boards	16
Police use of powers of arrest	16
Suspension of staff	20
Anonymity for those subject to allegations	23
Independent investigations	25
Disciplinary hearings	28
Guidance	30
4 Handling records of allegations	31
Personnel records	32
Police records and disclosure	35
Conclusions and recommendations	39
Formal Minutes	44
Witnesses	45
List of written evidence	45
List of unprinted evidence	46
List of Reports from the Committee during the current Parliament	47

Summary

Many Members of the House will have encountered in their constituency work cases of school staff who have been accused by a parent or pupil of improper conduct. Usually this will be an allegation of physical abuse or unnecessary force, but sometimes it will be of sexual misconduct. While some of these allegations will be true and should be punished, many will be unfounded, and only a tiny percentage lead to a caution or conviction of the staff member. Those wrongly accused are likely to go through a period of intense distress and may have their lives and careers ruined.

It will always be difficult to reconcile the need to adopt a cautious approach in the interests of safeguarding children and the need to protect the rights and livelihoods of those who work with children. However, it seems that there is a risk of losing sight of the principle that school staff, like anyone else accused of wrongdoing, should be treated according to acknowledged principles of justice and should be seen as innocent until proven guilty. The aim should always be to deal with allegations speedily, effectively and justly, to minimise the cost and the impact upon those accused.

The Department for Children, Schools and Families should compile data on allegations, including numbers of those referred to local authorities and those leading to police investigations or suspension. Only then can it begin to assess the cost of allegations to schools and their staff, both in personal and financial terms. In turn, employers should carry out more systematic reviews of how individual allegations were handled, to assess whether any suspension of a member of staff was justified and whether the allegation was handled expeditiously.

The first steps in dealing with an allegation are crucial. There is too much pressure on headteachers to refer cases to local authorities. Once this happens, there is a distinct risk of a prolonged and exhaustive investigation, even when there is no real foundation to the allegation. There should be more discretion for headteachers, and we argue that the Department should amend its guidance to those working with children to identify circumstances in which headteachers can justifiably handle allegations internally.

Another key decision is whether or not to suspend the staff member concerned. Despite some improvement, it seems that some headteachers are still too hasty to suspend when an allegation is made. More use should be made of alternatives, and headteachers should be made aware that the lawfulness of suspension can be challenged and that courts may not necessarily view suspension as a neutral act.

We were shocked that the Department condones attempts by employers to bar suspended staff from social contact with colleagues. Deliberate and authorised isolation of staff who may be entirely innocent and who may be disadvantaged by that isolation in gathering evidence to mount a defence in any disciplinary hearing seems inhumane and unjust. No such bar should apply outside school premises.

School staff who are subject to an allegation and who present themselves willingly at a police station for interview are sometimes arrested. We believe that this is justified only in very rare cases, and we recommend that police forces should review all such arrests over a

twelve-month period. Chief constables should ensure that officers use their power of arrest sensitively and judiciously.

The arguments for and against a statutory right of anonymity for those accused up until the point of court decision are finely balanced. We are acutely conscious of the risk that exposure of an allegation will tarnish the reputation of the member of staff concerned, perhaps undeservedly, and that the principle of ‘innocent until proven guilty’ may be undermined. The Department should examine the arguments again.

So-called ‘independent investigations’, conducted to inform disciplinary proceedings, are not always as objective as they should be. In particular, they should not be an exercise purely to assemble a case against the accused. Those who undertake such investigations should not be sourced from organisations which might have a particular viewpoint. Nor should investigations be contracted out to unknown third parties, as happens in Wales. Former senior employees of local authority childrens services departments will often be well placed to carry out the task, as long as it is not done on behalf of a school in their former local authority area.

School governors need more training for disciplinary hearings and should be supported by procedural advisers. Those accused should have a right to legal representation or to be accompanied by a trade union representative in all disciplinary hearings.

There is too much overlapping guidance for those who have to handle allegations. The Department should rationalise existing guidance and publish a very short handbook, summarising procedures and the criteria to be taken into account at key decision points, and containing references to a single authoritative and detailed volume of guidance.

Records of allegations, and the way in which those records present information, can have a direct impact on a person’s career mobility. Terminology used in personnel records to describe the outcomes of cases has sometimes been too loose, with a suspicion of guilt sometimes being indicated unfairly. The Department has produced good definitions of terms to describe outcomes but should stipulate that those who record outcomes should actually use those definitions.

Records of unfounded allegations linger in personnel records throughout a teaching career. Although there is a view that employers should be able to delete such records if they are satisfied that the alleged events have no foundation, we believe that such assessments would best be taken by the Independent Safeguarding Authority, which must be trusted to make fair decisions based on its expertise and all available evidence.

We also propose that the Independent Safeguarding Authority should assess all proposed disclosure of ‘soft’ non-conviction information prepared by police officers in response to an enhanced disclosure Criminal Records Bureau check. We heard that employers often rejected applicants for posts on the basis of unproven and possibly unfounded “soft” information. The Government should examine this practice and either justify permitting it or take steps to prevent it.

1 Introduction

1. School staff are in a position of trust. Parents and carers entrust children to their care daily in the expectation that they will be safe. In all but a few isolated cases, school staff respect that position and fulfil their duty of care. Occasionally, however, a member of staff will be accused by a pupil or parent of improper conduct of a type which may cause harm to that child. This is the Report of an inquiry which set out to establish whether the procedures for handling such claims are fair to those who are subject to them.

2. The terms of reference for our inquiry, which was announced on 1 April 2009, sought evidence on:

- The scale and nature of allegations of improper conduct made against school staff;
- Whether staff subject to allegations should remain anonymous while the case is investigated;
- Whether the guidance available to head teachers, school governors, police and others on how to handle claims of improper conduct by school staff should be revised, with particular reference to:
 - the procedures to be followed by disciplinary panels;
 - when suspension of the staff member concerned is appropriate;
 - when arrest of the staff member concerned is appropriate; and
 - the retention of records of allegations found to be false.

Although our terms of reference related specifically to school staff, this Report will also have some relevance to allegations made against staff at further and higher education institutions.

3. We received just over thirty written submissions from teachers, unions representing school staff (including school leaders), the National Society for the Prevention of Cruelty to Children (NSPCC), the Teacher Support Network, the National Governors' Association and others. We also took oral evidence on 17 June 2009. The oral evidence and some of the written evidence is published with this Report. Some written submissions we have neither published nor reported to the House: in several cases, this is because the author requested confidentiality.

4. We have purposely not investigated in detail particular cases described by individuals in written submissions. While this may disappoint some of those who clearly and maybe justifiably feel that they have suffered a serious injustice, we do not believe that the role of a parliamentary select committee is to try to resolve individual complaints.

5. The underlying question for this inquiry was one of balance: whether the rigour of the precautionary approach adopted in order to safeguard children is becoming disproportionate to the cost to those whose careers in working with children in schools may be destroyed on the basis of unfounded allegations.

6. Wherever that balance should lie, we believe that school staff subject to allegations should be treated according to acknowledged principles of justice and that a person accused of wrongdoing should be seen as innocent until proven guilty. The aim should always be to deal with allegations speedily, effectively and justly, to minimise the cost and the impact upon those accused.

2 The scale and nature of allegations

7. Some allegations will be true. Some will be misconceived, for instance when a child or parent is unaware of a staff member's right in law to intervene or restrain and alleges assault.¹ Some allegations will be unfounded but are triggered by circumstances elsewhere and are in effect cries for help; and some are simply malicious and calculated moves to undermine a particular teacher.²

The nature of allegations

8. The NUT said that almost all allegations made against its members were about physical restraint and discipline issues rather than alleged sexual misconduct.³ The union "Voice" told us that allegations in the 1980s and 1990s had been predominantly ones of sexual misconduct but that the number of allegations of physical abuse—such as hitting, slapping or rough handling—had increased in recent years.⁴ The NUT and the Association of School and College Leaders took a similar view, saying that most allegations related to physical violence: "he hit me" or "she pushed me".⁵ We were also told that staff in special schools for children with emotional and behavioural difficulties were frequently subjected to physical attack by the children and that allegations were sometimes made by people observing staff using approved forms of physical restraint.⁶ A majority of allegations, it seems, are made against male staff.⁷

9. The NASUWT suggests that there are signs that a culture of allegations is spreading: "there is an increasingly prevalent attitude of pupils challenging teachers with comments asserting their legal rights and threats that they will make an allegation against the teacher if she seeks to reprimand them for misbehaviour".⁸ We were told of one seven-year-old child who was heard to say "I will get you suspended" to the headteacher.⁹

1 Section 93 of the Education and Inspections Act 2006. See also Mr Kaufman Q 32

2 See Chris Keates Q 9

3 Amanda Brown Q 6

4 Ev 62

5 Ev 6 and Ev 38

6 Ev 67

7 Amanda Brown Q 13

8 Ev 13

9 Ev 68

10. An emerging trend, identified by the NASUWT, is for pupils to use social networking sites to make anonymous false or malicious allegations.¹⁰ We have not been able, in the time available, to explore this worrying development.

The number of allegations

11. We attempted to form a picture of the scale of allegations. Those who responded to our call for evidence cited a range of statistics on differing bases, for instance:

- The NSPCC said that in 2007–08, Childline received 68,758 calls about abuse and bullying; for 1,491 of the children counselled, a teacher was identified as the perpetrator of abuse;¹¹
- The DCSF supplied figures from a one-off survey for the period from 1 April to 30 September 2007, indicating that there had been 4069 allegations referred to local authority designated officers during the six-month period. 52% of those referrals were from employers in the education sector;¹²
- Allegations of abuse made against NASUWT members rose from 44 in 1991 (when figures were first collected by the union) to between 161 and 193 in each year from 1998 to 2007; but these figures only include cases where the union was required to instruct solicitors for a police interview;¹³
- The number of NUT members subject to an allegation of criminal misconduct has remained steady at about 200 cases per annum;¹⁴ as with NASUWT figures, these cases include only those in which solicitors were instructed to attend the police station;¹⁵
- In 2008, the Teacher Support Network dealt with 132 calls from teachers about allegations.¹⁶

12. The NUT told us that only 5% of cases led to a conviction or finding of misconduct.¹⁷ The NASUWT said that the overwhelming majority of allegations were found to have had no substance,¹⁸ and it provided a breakdown of the outcomes of cases in each year since 1991 (when figures were first collated by the union). Approximately 10% of cases reported by NASUWT members led to court proceedings, with about half leading to a caution or

10 Ev 13

11 Not all of the 68,758 were necessarily children or were counselled. The 1,491 figure may include repeat callers and calls “which do not appear genuine” but it does not include cases where the status of a perpetrator was not identified but could have been a teacher: Ev 71

12 Data supplied by local authority designated officers (LADOs): returns covered 85% of local authorities in England. Ev 78-79

13 Ev 18

14 Ev 6

15 Q 5

16 Ev 22

17 Ev 6

18 Q 1

conviction.¹⁹ Of the 95% of cases which did not lead to a caution or conviction, some may have had foundation and may have led to internal disciplinary action.

13. The Department surprised us by claiming that it was “rare for an allegation to be deliberately false or malicious”.²⁰ This claim was based upon the one-off review conducted by the Department in 2007, described above, which indicated that the proportion of allegations which were malicious was 2.8%.²¹

14. Some witnesses did not accept this figure at all: the Association of School and College Leaders said that the great majority of allegations of physical violence by teachers appeared to have no basis in fact or were greatly exaggerated.²² Mr Kaufman, a solicitor experienced in acting on behalf of school staff subject to allegations, agreed, pointing out that the Department had not supported its statement in any way.²³ Others suggested that the Department was using a particular interpretation of the term “false allegation”. Amanda Brown, Head of the Employment, Conditions and Rights Department at the NUT, said that:

We would take a false allegation as being one where there is no outcome that lays blame on the teacher. The DCSF, as I understand it, looks at a situation and asks whether there was anything that could have resulted in an allegation. So, for example, in a discipline issue, if a teacher has waded in to break up a fight in a playground, the DCSF won't treat it as a false allegation if they are cleared of any misconduct, but say that there was an issue. There was a nugget of factual information, which means that it was not a false allegation.²⁴

Chris Keates, General Secretary at the NASUWT, said that local authorities and Government departments could be reluctant to acknowledge the existence of false allegations “because it might be seen as trying to protect abusers”.²⁵ This view was not borne out by other evidence.

15. We raised the matter with Baroness Morgan of Drefelin, the DCSF Minister with responsibility for child protection. She agreed that the definitions used by the Government and by teaching unions were not necessarily comparable, and a Departmental official clarified that the term “deliberately false” used in the submission meant “deliberately and knowingly false” and was intended to describe allegations which were deemed to be malicious.²⁶

19 Ev 18

20 Ev 78

21 Uncorrected transcript of oral evidence taken before the Children, Schools and Families Committee on 24 June 2009, on the *Training of Children and Families Social Workers*, HC 527-iv, Session 2008–09, Q 320

22 Ev 38

23 Q 12

24 Q 11

25 Q 12

26 Uncorrected transcript of oral evidence taken before the Children, Schools and Families Committee on 24 June 2009, on the *Training of Children and Families Social Workers*, HC 527-iv, Session 2008–09, Q 322

16. There is perhaps a distinction between allegations which are deliberately false, being fabricated and exaggerated but perhaps with no motive other than to seek attention, and those which are malicious and calculated to do damage. Nonetheless, regardless of the debate about definitions, our *constituency* experience leads us to doubt that the proportion of allegations which are malicious is really as low as 2.8%.

The impact of allegations

17. As the union “Voice” pointed out:

The lives and careers of innocent people have been ruined by false allegations of abuse, even after they have been acquitted of any offence. Being falsely accused and suspended can cause severe personal distress and long-term damage to the accused’s career. A large number of our members have left the profession and suffered damage to their health.²⁷

Similar points were made by the Association of School and College Leaders and individuals who described their personal experiences.²⁸ Even when a member of staff has been cleared by a disciplinary panel and neither the police nor local authority social services have found any case to answer, rehabilitation at school after a potentially long absence can be difficult.

18. In some cases, a teacher’s family may become involved in the investigation and restrictions may have been placed upon the activities of the accused. The NUT told us of a case in which a teacher was obliged to certify that he would have no sole contact with his baby daughter for a year.²⁹ In another case, raised in debate in the House, a member of staff was forbidden to watch his son play rugby for his school, even at away matches.³⁰

19. Allegations with any weight at all have an impact upon the school concerned, not least in terms of finance. Setting aside the expenses of any court process, an independent investigation to inform disciplinary proceedings, if commissioned, may be costly; and the cost of arranging cover for a member of staff suspended on full pay can be significant, especially if the suspension lasts for months. We were told that a bill of £30,000 for cover by supply staff during a suspension was common.³¹ If members of staff are supporting allegations, for instance against a headteacher, the effect upon staff morale and confidence in the direction and ethos of the school may be crippling.

20. There may also be implications for teacher recruitment if, as was reported to us, anxiety about the possibility of allegations causes graduates to hesitate to enter the teaching profession.³² The NUT spoke of the “chilling effect” for all teachers whether or not they were the subject of an allegation;³³ and a witness representing the National Association of

27 Ev 61

28 Ev 38

29 Amanda Brown Q 16

30 Memorandum from Roger Lock [not printed], see *HC Deb* 2 April 2009, vol. 1125

31 Memorandum from Jenni Watson, paragraph 3 [not printed]

32 Chris Keates Q 1

33 Amanda Brown Q 5

Head Teachers spoke of anecdotal evidence that people, particularly when considering taking up a headship, were put off by publicity given to allegations made against headteachers and by the responsibility of managing allegations.³⁴

21. We have considered whether the lack of consistent data on allegations is significant. The NUT told us that keeping a register of allegations was important in “knowing the scale of the problem and being able to define it”.³⁵ We agree. More importantly, perhaps, a consistent set of data kept on a regular basis would allow the Department and local authorities to begin to assess the cost of allegations, financial and otherwise. **We believe that it is unsatisfactory that there are no comprehensive data compiled on a regular basis for allegations against school staff. We recommend that the following data should be collected annually from all schools:**

- **The number of allegations referred to local authorities;**
- **The number of allegations leading to police investigation;**
- **The number of allegations leading to suspension of the staff member concerned; and**
- **Outcomes, including those that lead to criminal convictions and dismissal.**

As numbers will be small, we do not believe that this would be an unduly onerous requirement.

22. We urge the Department not to dismiss this recommendation out of hand. We bear in mind the Report on Bullying published by the former Education and Skills Committee. In it, the Committee recommended that the Department should introduce a requirement for schools to record all incidents of bullying along with information about the type of bullying incident.³⁶ The Government agreed to strengthen its encouragement to schools to record all incidents of bullying and report the statistics to their local authority; but it resisted the introduction of a statutory requirement, arguing that there would be logistical difficulties and that the introduction of a requirement to record bullying incidents “will not necessarily persuade more schools to do so”.³⁷ Our predecessors were not convinced by the Department’s argument, and we do not believe that a parallel argument can be sustained in relation to allegations against staff.

3 The investigatory process

23. There is no single, standard investigatory process. Different types of allegation will be handled by different bodies. If there is a suspicion that a criminal act may have been committed, the case is likely to be referred to the police and/or to local authority social services in the first instance. Once these investigations have concluded (whether or not

34 Kathryn James Q 54

35 Amanda Brown Q 7

36 *Bullying*: Third Report from the Education and Skills Committee, Session 2006–07, paragraph 33

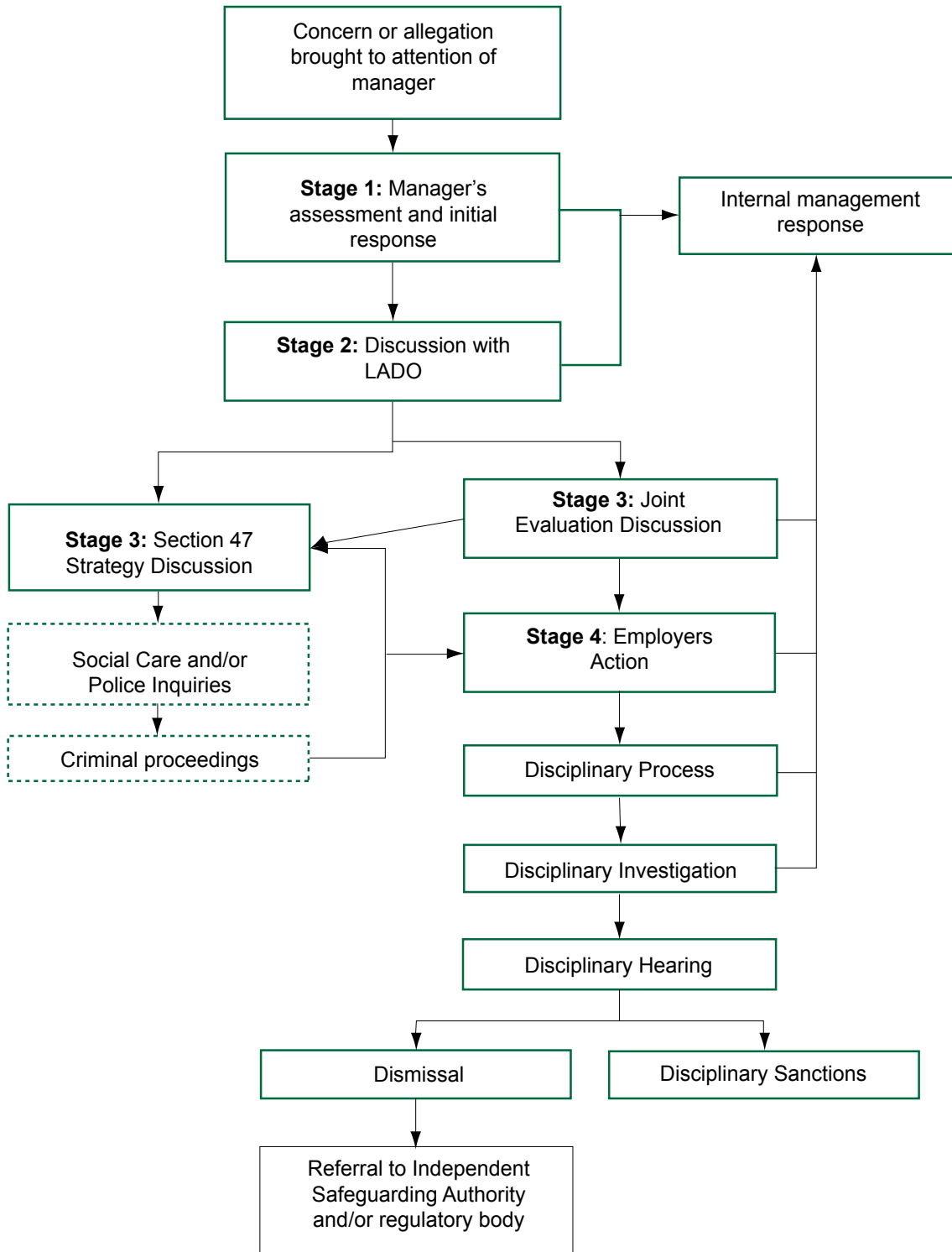
37 *Bullying: Government Response to the Committee’s Third Report of Session 2006–07*, Third Special Report, Session 2006–07, HC 600, response to Recommendation 6

they lead to criminal proceedings), or in cases not referred to either the police or local authority social services, an internal disciplinary investigation may be held. Once that has concluded, disciplinary action may be taken, which may in turn lead to referral to the Independent Safeguarding Authority, to assess whether the member of staff should be placed on a list of persons barred from working with children, and/or to the General Teaching Council for England, to assess whether a teacher should continue to be registered with the Council.³⁸ A summary diagram of the various courses which the process for handling allegations might follow appears in draft guidance for practitioners issued by the Department in May 2009 for consultation, and it is reproduced overleaf.³⁹

38 Ev 41

39 *Handling allegations of abuse made against adults who work with children and young people*, DCSF, May 2009, Page 13

Procedures for handling allegations made against school staff



Source: Handling allegations of abuse made against adults who work with children and young people, DCSF draft guidance, May 2009

24. A recurring theme in evidence was the strain placed on those subject to allegations by the protracted nature of the various investigatory processes. Some members of the Committee have first-hand knowledge of cases in which separate bodies ran consecutive investigations into a single allegation, causing proceedings to be drawn out over many

months. In one example, a police investigation was held first and found no case to answer; this was followed by an investigation by local authority social services, which found no case to answer; this was followed by an internal disciplinary investigation.⁴⁰ A witness representing the National Association of Head Teachers recounted a similar example.⁴¹ One person who sent a written submission had been investigated by the General Teaching Council for England two years after the allegations had been made.⁴² As the National Governors' Association pointed out, "lengthy investigations are not just traumatic for the staff involved: they also cause operational and financial difficulties for the school and can impact on pupils".⁴³

25. Police officers may not be able to treat investigation of an allegation against a member of school staff as a priority, with consequences for all those involved. We note the observation by Sir Roger Singleton, in his Review of Safeguarding Arrangements in Independent Schools, Non-Maintained Special Schools and Boarding Schools in England, that:

In a typical case, the local police may require all action by the school to cease while they decide if a prosecution is warranted, leaving the school with minimal information with which to manage the concerns of pupils, parents and staff, including staff who may be suspended from duty. The school may then find the matter referred back to them some time later, when the police have decided this is not a case for prosecution. But in the meantime, the school has had to cope with the anxiety of pupils, parents and staff about how the case will proceed; may have incurred substantial costs associated with lengthy suspensions; and is now faced with the task of investigating the matter properly themselves, made more difficult as the trail is cold.⁴⁴

26. We asked witnesses whether it would be possible to combine investigations. FACT pointed out that police, local authorities and schools each operated within a different statutory framework and were accountable to different bodies.⁴⁵ Nonetheless, **we question whether there is a need for a lengthy investigation of an allegation by local authority social services if a police investigation has concluded that no crime has been committed or that there is no case to answer.**

27. There may be scope for sharing evidence. The General Teaching Council for England, which will have a role in investigating allegations in cases which have led to the dismissal of a teacher for misconduct, incompetence or criminal offending, said that "if there is some coherence across the collection and use of evidence in the early stages, that means that when we come to our investigation [into] whether or not the teacher should remain registered, we can use that evidence that has already been collected for previous

40 Q3

41 Kathryn James Q 52

42 Mark Jeffrey Ev 56

43 Ev 37

44 *Keeping our School Safe: Review of Safeguarding Arrangements in Independent Schools, Non-Maintained Special Schools and Boarding Schools in England, March 2009, paragraph 4.96*

45 Ev 5

purposes”.⁴⁶ Mr Gargan, Assistant Chief Constable at Thames Valley Police, told us that “we encourage our officers to obtain evidence in a way that can be shared and used for a dual purpose, such as professional hearings”.⁴⁷ If observed, this would clearly be good practice. **We recommend that representatives of the Association of Chief Police Officers, local authorities and teacher unions meet to agree a protocol for the recording and sharing of information.**

28. The remainder of this Report examines the various stages of investigation and the particular issues which arise.

The first stages of investigation

29. Allegations are most commonly reported to a member of school staff, sometimes directly to the head teacher. The head teacher then faces a crucial decision on whether the allegation is serious enough to engage either the police or local authority social services. It was made clear to us that the initial phases in handling an allegation were critical for all those involved.⁴⁸

30. The NASUWT told us that “headteachers are generally now less inclined and lack the confidence to deal even with low-level allegations internally, instead referring all cases to the local authority”, with the result that minor restraint incidents are treated in the same way as are serious allegations of sexual abuse.⁴⁹ The Association of School and College Leaders also argued that the “general injunction” to hand matters to the local authority or to the police could lead to over-reaction.⁵⁰ The NUT told us that it was concerned that head teachers were not allowed to exercise more professional judgment at this stage, implying that head teachers were feeling obliged to refer to local authorities alleged acts which they were confident could not have taken place.⁵¹ Clare Collins, Chair of the National Governors’ Association, noted that there were sometimes allegations which simply had no credibility and in which claims were made that a teacher had acted in a particular way when in fact the teacher had not even been in the school at the time.⁵²

31. DCSF guidance encourages referral to local authorities, saying that “it is important to ensure that even allegations that appear less serious ... are examined objectively by someone independent of the school or college” and that the local authority designated officer should be informed of all cases which “appear to meet” specified criteria, namely that a member of staff has:

- Behaved in a way that has harmed a child or may have harmed a child;
- Possibly committed a criminal offence against or related to a child; or

46 Alan Meyrick Q 50

47 Q 50

48 Fiona Hammans Q 52

49 Ev 14

50 Ev 38

51 Amanda Brown Q 15

52 Q 53

- Behaved towards a child in a way that indicates that he/she is unsuitable to work with children.⁵³

Because of the way in which guidance is set out, and because it is based upon cross-referencing between different paragraphs, there is some ambiguity about whether the requirement to inform the local authority designated officer is triggered by an *appearance* that the criteria have been met, which implies scope for an assessment by the head teacher, or whether the requirement is triggered by an *allegation* of events which meet the criteria. We suspect that almost all allegations would meet this threshold, and in few cases would it not at least appear that a child *might* have been harmed; so it is no wonder that headteachers feel obliged to refer a case to the local authority.

32. We believe that headteachers should have more discretion to intervene early in cases and to handle allegations internally if they are satisfied that there is no prospect of harm being caused to the child. We recommend that the Department amend guidance to those working with children to identify circumstances in which headteachers can justifiably handle allegations internally. We are not convinced, however, that the same discretion should apply to governors considering an allegation against a headteacher.

The role of the local authority

33. DCSF guidance makes no statement explicitly about the overall role of the local authority in handling allegations against members of school staff. The Department does elaborate on the role of local authority designated officers (LADOs), which it says should “have overall responsibility for oversight of the procedures for dealing with allegations” and “should be involved in the management and oversight of individual cases”.⁵⁴ It adds that the LADO should also:

- provide advice and guidance to employers and voluntary organisations;
- liaise with the police; and
- monitor the progress of all cases to ensure that they are dealt with as quickly and consistently as possible through the use of a fair and thorough process.⁵⁵

34. The General Teaching Council for England said that “our expectation is that the great majority of complaints raised against teachers will be successfully addressed at school level” and that “we understand that the [local authority] role is confined to reviewing the adequacy of the procedures followed in considering the complaint rather than the substance of the matters at issue”.⁵⁶ Yet some written submissions suggested that local authorities became heavily involved in the investigations themselves;⁵⁷ and a witness appearing on behalf of the Association of School and College Leaders spoke of “variation

53 *Safeguarding Children and Safer Recruitment in Education*, DCSF, 2006, paragraphs 5.14 and 5.1

54 *Safeguarding Children and Safer Recruitment in Education*, DCSF 2006, para 5.12

55 *Handling allegations of abuse made against adults who work with children and young people*, DCSF draft guidance published for consultation on 13 May, paragraph 9

56 Ev 41

57 See for example, memorandum by John Pinnington, Ev 57

across authorities”, with some authorities “going after” school staff if an allegation is made, whereas others looked at the balance between the allegation and the member of staff’s needs and made a measured judgment.⁵⁸

35. We were also given examples of what appeared to be oppressive behaviour by local authorities: the NUT recorded cases of headteachers coming under considerable pressure from local authority social services to suspend staff, with one authority allegedly threatening to remove the governing body if it did not comply with the authority’s wishes.⁵⁹ A submission from a headteacher cited “intense pressure from the local authority for me to resign”, apparently before the outcome of any investigation.⁶⁰

36. In other cases, the local authority appeared to have taken on a controlling role which brought into question the impartiality of the investigation. A headteacher described his appearance before a disciplinary panel on a charge of gross misconduct: as the governing body was implicated in his defence, the local authority selected a team of governors from other schools to deal with the case, advised the disciplinary panel, presented the case against the teacher, and questioned witnesses. He added that the panel members were obliged to accept the advice of the local authority representative or risk being held individually liable for any future claim.⁶¹ A chair of governors described an investigation as proceeding with the local authority as “investigator, prosecutor, judge, clerk and jury”.⁶² We did not receive enough evidence to make a judgement on whether or not these were merely isolated instances.

The role of Local Safeguarding Children Boards

37. The Department told us that Local Safeguarding Children Boards (LSCBs) had no role in investigating individual allegations but that they were “the key statutory mechanism for agreeing how the relevant organisations in each local area will co-operate to safeguard and promote the welfare of children in that locality, and for ensuring the effectiveness of what they do”.⁶³

Police use of powers of arrest

38. The issue which most exercised witnesses about police investigations was police officers’ use of their power to arrest. Placing a person under arrest entitles police officers to keep him or her in custody (probably in a police cell) for up to 24 hours initially, and to take photographs, fingerprints and a DNA sample. The Association of School and College Leaders said that “there should be no need to arrest a member of staff who is willing to co-

58 Fiona Hammans Q 52

59 Ev 7

60 Submission from Mark Jeffrey, Ev 55

61 Submission from Mick Madden, Ev 66

62 Ev 68

63 Ev 82

operate with the police, yet arrests are made even of people who have presented themselves at a police station to make a statement”.⁶⁴ The NUT made a similar point.⁶⁵

39. Mr Paul Kaufman, a member of a panel of solicitors instructed by the NUT to assist with teachers who are being investigated by the police in relation to alleged criminal offences, drew our attention to the criteria for arrest set out in Code G under the Police and Criminal Evidence Act 1984, under which an officer “must have reasonable grounds to believe that the person’s arrest is necessary”. The various criteria prescribed by the Code for measuring necessity are set out overleaf.

64 Ev 39

65 Ev 7

POLICE AND CRIMINAL EVIDENCE ACT 1984

EXTRACT FROM CODE G: CODE OF PRACTICE FOR THE STATUTORY POWER OF ARREST BY POLICE OFFICERS

The criteria are that the arrest is necessary:

- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name)
- (b) correspondingly as regards the person's address. An address is a satisfactory address for service of summons if the person will be at it for a sufficiently long period for it to be possible to serve him or her with a summons; or, that some other person at that address specified by the person will accept service of the summons on their behalf.
- (c) to prevent the person in question –
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury ;
 - (iii) causing loss or damage to property;
 - (iv) committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question); or
 - (v) causing an unlawful obstruction of the highway;
- (d) to protect a child or other vulnerable person from the person in question
- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question.
This may include cases such as:
 - (i) Where there are reasonable grounds to believe that the person:
 - has made false statements;
 - has made statements which cannot be readily verified;
 - has presented false evidence;
 - may steal or destroy evidence;
 - may make contact with co-suspects or conspirators;
 - may intimidate or threaten or make contact with witnesses;
 - where it is necessary to obtain evidence by questioning; or
 - (ii) when considering arrest in connection with an indictable offence, there is a need to:
 - enter and search any premises occupied or controlled by a person
 - search the person
 - prevent contact with others
 - take fingerprints, footwear impressions, samples or photographs of the suspect
 - (iii) ensuring compliance with statutory drug testing requirements.
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question. This may arise if there are reasonable grounds for believing that
 - if the person is not arrested he or she will fail to attend court
 - street bail after arrest would be insufficient to deter the suspect from trying to evade prosecution.

Source: Code G, Codes of Practice under the Police and Criminal Evidence Act 1984, paragraph 2.9

40. In his analysis of the criteria, Mr Kaufman argued that:

- the details covered by criteria (a) and (b) would invariably be easy to ascertain;

- suspension by the school would normally suffice in relation to criteria (c) and (d); and
- criterion (e) would rarely apply, as the great majority of interviews of teachers under investigation by the police did not take place until at least several days, or more usually several weeks, after an initial complaint had been made. In fact, Mr Kaufman noted, the common complaint of teachers was that investigations take too long.⁶⁶

We would expect an arrest under criterion (f) to be justified only in very rare cases.

41. Mr Kaufman accepted that there were very occasionally extremely serious allegations made against teachers where there was a genuine risk of a teacher disposing of evidence or otherwise interfering with the course of the investigation (for example by talking to witnesses): in such cases, it was imperative for a prompt and effective investigation that the police arrested the suspect. However, he also believed that there were teachers who were arrested simply because the police took the view that the allegation was serious and/or that the evidence of an offence being committed was credible. In neither instance was arrest justified under Code G, and he concluded that, in the great majority of cases, the arrest of teachers was unnecessary. He also suggested that police officers sometimes “simply don’t appreciate the impact of arresting someone” and that they failed to differentiate between teachers and other types of suspect for whom arrest might be routine; and he pointed out that teachers were particularly vulnerable because they occasionally undertook what was in effect a policing role in schools, intervening to prevent violence.⁶⁷

42. The NASUWT cited examples of cases in which the lawfulness of the arrest of a teacher in relation to an allegation of improper conduct had been challenged and in which the police had conceded, before the challenge had reached the court, that the arrest had been unlawful.⁶⁸

43. We invited Mr Nick Gargan, Assistant Chief Constable at Thames Valley Police, to respond to claims that police officers were making unnecessary arrests of school staff. He said that:

Knowing where people are gives us a degree of control to deal with issues that arise during their interview, evidence that they present, evidence we might seek to obtain, and other people that we might want to talk to. Arrest is an effective administrative mechanism for keeping hold of people and having them where we want them.⁶⁹

We note that the guidance on arrest strategies in child protection cases, as set out by the National Centre for Policing Excellence and displayed by Mr Gargan in evidence, says that action should be “proportionate to the need to protect children and to safeguard the rights of the suspect, particularly with regard to their home, work and family life”.⁷⁰ Mr Gargan

66 Ev 8 and 9

67 Ev 9 and 12

68 Case studies (vi) and (vii), Ev 20

69 Q 37

70 *Guidance on investigating child abuse and safeguarding children*, National Centre for Policing Excellence, on behalf of ACPO, 2005. See Q 69

also provided us with an account of the guidance given to recruits on the impact of arrest and the significance of depriving someone of their liberty.⁷¹

44. Mr Gargan told us that arrests of teachers represented only 0.2% of arrests in the Thames Valley policing area, and that most of those arrests related to actions off-duty and away from school. He did not accept that there was evidence of excessive numbers of arrests being made and he maintained that officers would, if anything, be more reluctant to arrest a teacher, doctor or fellow police officer, and that officers “already think especially carefully about arresting a teacher”.⁷² However, he appeared to acknowledge that there were some wayward decisions, saying that “I think that the way to deal with these odd cases that one hears about from time to time, where the power has allegedly been used carelessly or inappropriately, should be through the police conduct regulations, not through changing the rules about arresting teachers”.⁷³

45. We do not doubt Mr Gargan’s evidence, that efforts are made to instil an understanding of the guidance on when to make an arrest. However, we are satisfied, from the evidence presented to us, that some arrests of teachers facing allegations have been inappropriate. Indeed, we believe that it would be very rare for circumstances to justify an arrest. **We recommend that the Government should undertake a one-off exercise to find out how many arrests were made over a twelve-month period of school staff following an allegation of improper conduct. Police forces should review those cases to assess whether arrest had been justified. We remind chief constables that it is their responsibility to ensure that officers use their power of arrest sensitively and judiciously.**

Suspension of staff

46. A second crucial question to be faced by a headteacher at the outset is whether or not to suspend a staff member who has had an allegation made against them. Suspension generally entails enforced absence from the school while on full pay.

47. A number of submissions argued that while suspension is seen as a neutral act in law it is not neutral in practice, as a sudden or prolonged absence of a teacher fuels gossip and taints the teacher’s reputation to the extent that some find it difficult to return to work even if cleared of all allegations. The NASUWT said that “the longer the suspension, the greater the effect it has on health, well-being, family life and potential to return to their career, whatever the outcome of the investigation”.⁷⁴

When suspension is appropriate

48. Guidance issued by the Department says that “suspension should be considered in any case where there is cause to suspect that a child is at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that it might be grounds for

71 Q 54

72 QQ 38, 66 and 67

73 Q 66

74 Chris Keates Q 27

dismissal. However, a person must not be suspended automatically or without careful thought”; and schools are encouraged to consider alternative arrangements.⁷⁵ Supplementary guidance issued by the Department in May 2009 for consultation points out that a decision to suspend without careful thought can impede a police investigation, by causing an employee to destroy evidence.⁷⁶

49. In its written submission to our inquiry, the Department stated that “suspension should not be for longer than is strictly necessary”. This is in line with ACAS guidance that suspension should be for as short a period as possible.⁷⁷ No such statement appears, however, in the draft guidance for practitioners issued by the Department in May 2009, either in the body of the guidance or in the Annex dealing specifically with suspension. **The lack of any statement in the Department’s draft guidance for practitioners on keeping the length of suspension to a minimum is an omission which should be rectified.**

50. Although some witnesses seemed content that schools and employers had a good understanding of when suspension is appropriate,⁷⁸ others said that employers resorted to suspension “far too frequently” or did not take the guidance into account.⁷⁹ The National Governors’ Association cited anecdotal evidence that “suspension is often an automatic reaction”.⁸⁰ Fiona Hammans, a headteacher giving oral evidence on behalf of the Association of School and College Leaders, acknowledged that “When you have the press banging on the door and the phones going, you think, “Right—suspend. It’s dead easy, and looks like we’ve made a robust response””.⁸¹

51. Both FACT (Falsely Accused Carers and Teachers) and Professor Pat Sikes⁸² suggested that the understanding that suspension was a neutral act had come into question following a judgment of Lord Justice Sedley in 2007, in which he said that “suspension changes the status quo from work to no work, and it inevitably casts a shadow over the employee’s competence ... it is not a neutral act”.⁸³

52. The NUT told us that teachers were rarely interviewed by the head teacher to assess whether suspension was appropriate, and that alternatives to suspension were little used.⁸⁴ On the first point, we were told by one witness that an employer considering suspension was required by law to discuss it with the employee’s union representative and come to an agreed set of actions.⁸⁵ We have not sought to establish whether this is in fact the case; but

75 *Safeguarding Children and Safer Recruitment in Education*, DCSF, 2006, para 5.23

76 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May, para 43

77 Ev 80 and 81

78 FACT, Ev 4; Voice, Ev 62

79 Memos from NASUWT, Ev 15; NUT, Ev 6; ASCL, Ev 38

80 Ev 37

81 Q 55

82 A member of staff at the School of Education at the University of Sheffield

83 *Mezey v South West London and St George’s Mental Health NHS Trust*, [2007] EWCA Civ 106. It should not necessarily be assumed that the circumstances on which Lord Justice Sedley based his judgment—which related to suspension of a consultant psychiatrist—necessarily equate to those under which school staff might be suspended. See Ev 4 and 76

84 Ev 7

85 Fiona Hammans Q 55

nonetheless **we believe that it would be best practice for a headteacher to discuss suspension with the accused before any decision is taken, while clearly reserving the right to suspend.**

53. On the second point raised by the NUT, over the short term, it may be not too difficult to find alternative forms of work which can be undertaken at home or possibly at the local authority (as was suggested by the Teacher Support Network).⁸⁶ In some cases it might even be possible to continue working at the school by making changes to the teacher's timetable.⁸⁷ In supplementary guidance for practitioners, issued in May 2009 for consultation, the Department listed further options, such as work not involving contact with children, or arranging for an assistant or colleague to be present when the worker has contact with children.⁸⁸ In the long term, however, alternatives to suspension may be difficult to sustain.

54. In our view, the Department's guidance on when suspension is appropriate is sound, but there is some doubt about whether that guidance is being followed consistently. **We welcome the steps taken by the Department to reiterate guidance on when suspension of a member of staff is appropriate and on possible alternatives. We recommend that guidance should remind users that the lawfulness of suspension can be challenged and that suspension may be held by the courts not to be a neutral act. We also recommend that each decision to suspend a member of staff subject to an allegation should be reviewed once proceedings have run their course, to assess whether the decision had, in retrospect, been justified.** We say more about reviews in paragraph 86.

Support for suspended teachers

55. The NUT told us that guidance that suspended teachers should be provided with counselling, advice, and details of people to contact at the school or local authority was often not followed.⁸⁹ The Association of Teachers and Lecturers told us that local authority designated officers (LADOs) did not always keep individuals informed of the progress of developments;⁹⁰ and the NUT gave examples of how schools had sometimes failed to keep suspended staff "in the know", for instance by failing to forward school bulletins or notices of internal vacancies, or even payslips.⁹¹ The Teacher Support Network highlighted the importance of emotional support, noting that a suspended teacher has "to work through a complex set of feelings and deal with your local communities, as well as the ramifications of being taken out of the school environment".⁹²

56. Several submissions pointed out that suspended teachers were often barred from any contact with children or colleagues at the school.⁹³ We were shocked to discover that the

86 Julian Stanley Q 27

87 Ms Hammans Q 55

88 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May 2009, Annex F

89 Q 27

90 Ev 70

91 Ev 7

92 Mr Stanley Q 27

93 NUT, Ev 7; FACT, Ev 4; and other individual submissions not reported to the House

Department's supplementary guidance, issued in May 2009 for consultation, states that "social contact with colleagues and friends should not be discouraged" but adds "except where it is likely to be prejudicial to the gathering and presentation of evidence".⁹⁴ The enforced isolation of someone who may be entirely innocent and who may be disadvantaged by that isolation in gathering evidence to mount a defence in any disciplinary hearing seems inhumane and unjust. While such a restriction might be justifiable on school premises, we doubt that to try to prevent social contact outside the school setting for the benefit of local authority social services and investigators would be enforceable under existing law.⁹⁵ Nor would it be practical if members of the family of the accused attended or worked at the school concerned. **Guidance to headteachers and to governors should specify that any bar on contact between an accused teacher and other school staff should apply on school premises only.**

57. The same draft guidance issued by the Department for practitioners states explicitly that employers "should act to manage and minimise the stress inherent in the allegations and disciplinary process" and that:

- 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 social care or police;
- Individuals should be advised to contact their trade union representative, if they have one, and given access to welfare counselling or medical advice where this is provided by the employer;
- Employees need to be kept informed of both the progress of their case and work-related issues.⁹⁶

This is a restatement of principles set out in guidance previously published by the Department.⁹⁷

58. We welcome the stress placed by the Department in its draft guidance for practitioners on making constant and appropriate support available to members of staff subject to allegations. We remind local authorities, employers and school leaders of their duty of care to school staff and of the importance of continuing to treat suspended members of staff as full-time employees fully involved in the work of the school.

Anonymity for those subject to allegations

59. The Department says that "every effort should be made to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered".⁹⁸

94 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May 2009, para 82

95 See submission from FACT, Ev 4

96 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May 2009, paragraphs 79 to 82

97 *Safeguarding Children and Safer Recruitment in Education*, DCSF, 2006, para 5.6

98 *Safeguarding Children and Safer Recruitment in Education*, DCSF, 2006, para 5.7

There is no statutory right to anonymity: instead, the press (through the Code of Practice enforced by the Press Complaints Commission) and the police (through internal guidance) exercise self-regulation to protect people from being identified up until the point at which charges are brought. The DCSF feels that “the current guidance on confidentiality is working well” and it told us that a review of implementation of guidance on handling allegations had revealed very few recent cases of press reporting on allegations before a charge had been made.⁹⁹

60. The “Voice” union pressed for the right to anonymity to become statutory.¹⁰⁰ In the past, teacher unions have pressed for an extension of the existing informal right to anonymity for school staff up until the moment of court decision, on the basis that the harm caused to teachers by a false allegation is so great that the impact must be limited to those who have been found guilty of misconduct. The Association of School and College Leaders, the NASUWT and the NUT continued to advocate this in written evidence.¹⁰¹ Mr Kaufman pointed out that complainants in rape cases were entitled to anonymity and that there was no practical obstacle to ensuring anonymity throughout a judicial process.¹⁰² However, in oral evidence to us, the NASUWT suggested that the success of recent efforts to speed up investigations had led to fewer cases being exposed in the media. It added that, for most teachers, the biggest issue was not anonymity but the recording and disclosure of information on allegations.¹⁰³ We deal with this issue in section 4 of the Report.

61. The NSPCC is opposed to the extension of anonymity, arguing that it would not improve protection for children, would treat teachers as a special case without justification, and would remove the potential for more witnesses or fellow sufferers to become aware of the charges and to come forward.¹⁰⁴

62. The practicality of maintaining anonymity throughout an investigation seems questionable. Mr Stanley, Chief Executive of the Teacher Support Network, said that “anonymity is something which people would desire” but that “whether it is possible to achieve, given the nature of schools, is potentially more difficult”.¹⁰⁵ A chair of governors at a special school for children with emotional and behavioural difficulties argued that, while anonymity might be retained for a short period, “in a small community like a school, other staff and parents find out who is being interviewed and draw their own conclusions”.¹⁰⁶ The National Governors’ Association was similarly doubtful about the practicality of anonymity, noting that school staff, governors and local authorities could be held to account for any breaches of confidentiality, but that this was not the case for pupils and parents.¹⁰⁷ NASUWT pointed out that a suspension of a member staff, which would entail

99 Ev 80

100 Ev 62

101 NASUWT, Ev 13; NUT, Ev 6; ASCL, Ev 38

102 Q 25

103 Chris Keates Q 26

104 Ev 72

105 Q 26

106 Ev 68

107 Ev 36

their absence from school, would not stop the “rumour mill” and nor would anonymity.¹⁰⁸ Only one witness seemed to think that anonymity could be maintained.¹⁰⁹

63. We are not sure that a right to anonymity up until the point of court decision would deliver a significant benefit to those subject to allegations. Even if it were to succeed in preventing details of an allegation from being published or broadcast by the local media, it might do little to stop details being circulated amongst children and parents. The argument that anonymity up until the point of court decision could remove the potential for more witnesses or fellow sufferers to become aware of the charges and to come forward is a strong one. On the other hand, exposure of an allegation under investigation will almost invariably tarnish the reputation of the member of staff concerned, and the principle of ‘innocent until proven guilty’ will be undermined. We recommend that there should be further consideration by the Department of the case for statutory anonymity for school staff subject to allegations.

Independent investigations

64. In cases where police or local authority social services have concluded investigations and have found no case to answer, there may still be grounds for disciplinary action against the member of staff concerned. To establish the facts and inform the disciplinary hearing, a further investigation may be required and, if the allegation is serious enough, an independent investigator may be appointed.

Inequity

65. Supplementary guidance for practitioners handling allegations, issued by the Department in May 2009 for consultation, specifies that the investigating officer “should approach the investigation on the basis of an objective fact-finding exercise” and that “the process must be robust, well informed and ensure the most rigorous standards for safeguarding children are observed, whilst at the same time ensuring the balance of justice and fairness for the employee”.¹¹⁰

66. However, many submissions argued that the investigatory process treated the accuser and the accused unequally. It was claimed that:

- The accused is not always informed of exact charges: one submission suggested that this was “to limit opportunities for tampering with potential evidence”;¹¹¹
- The accused is interviewed last, and the investigator remains unaware of innocent explanations of events until the end of the process;
- Whereas the investigator is free to seek evidence from all quarters, suspended staff do not have access to the same range of information and are commonly banned from all

108 Chris Keates Q 26

109 Ms James Q 56

110 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May 2009, para 62

111 Submission from Andrew Walker, Ev 68

contact with colleagues, thereby isolating them and disadvantaging them in mounting a defence;¹¹² and

- The accused has no access to the findings of the investigation.¹¹³

67. We have not investigated these individual claims, and we do not seek to express a view on whether they are justified. Nor, in most cases, have we been able to assess whether they are isolated instances of bad practice. However, there was a common thread running through submissions from teachers who had been subject to investigation, that the investigation seemed to be conducted on the basis that the person being investigated was guilty and that the onus was upon them to prove themselves innocent.¹¹⁴ For those who maintained their innocence throughout, the strong impression was of an erosion of the principle of “innocent until proven guilty”. **We believe that an investigation must not be an exercise purely to assemble a case against the staff member concerned.**

Investigators

68. We heard criticism of the methods used for selecting independent investigators. Departmental guidance says that “many local authorities already provide for an independent investigation of allegations in some way, often as part of the personnel services that schools and FE college can buy in from the authority”.¹¹⁵ The NUT, however, spoke of a new tendency to subcontract the investigation to an external body much more frequently; and it questioned whether engaging a representative of a body such as a children’s charity or any other agency with an interest in child protection to carry out an investigation might raise fears and heighten tensions.¹¹⁶ A Chairman of Governors at a primary special school claimed that independent investigators “tend to be drawn from organisations that are built on a presupposition of adult guilt, or are ex-employees of the commissioning authority”.¹¹⁷ FACT (Falsely Accused Carers and Teachers) said that investigators were “selected according to status rather than experience” and were not properly trained;¹¹⁸ and another witness questioned whether investigators were necessarily alert to the need to balance evidence.¹¹⁹

69. The NASUWT drew our attention to the independent investigation service introduced in Wales in 2006.¹²⁰ The Staffing of Maintained Schools (Wales) Regulations 2006 introduced a requirement for governing bodies of maintained schools in Wales to appoint an independent investigator to investigate child protection allegations made against school staff. The Welsh Assembly Government awarded a contract to Servocadream to provide an independent investigation service for governing bodies; the role of the independent

112 NUT, Ev 7; FACT, Ev 4

113 Memorandum from Mick Madden, Ev 65

114 For instance Ms Hammans Q 57

115 *Safeguarding Children and Safer Recruitment in Education*, DCSF, 2006, para 5.21

116 Amanda Brown Q 16

117 Andrew Walker, Ev 68

118 Ev 4

119 Ms James Q 57

120 Ev 14

investigators is to interview people involved in a child protection allegation and could result in them having to interview or re-interview children. Although it was initially estimated that there would be approximately 20 cases per year requiring independent investigation, in the first year of the contract around 100 referrals were made to Servocadream.¹²¹

70. We note that Servoca plc, which supplies the independent investigators through Servocadream, describes its “consultants” as having “extensive experience in law enforcement, ranging from leading complex fraud, corporate and financial investigations, to carrying out surveillance operations”. Servoca plc says that it holds “an extensive database of former police officers and staff and other experts, giving you access to a large and diverse bank of specialist resources as and when you need them”.¹²²

71. We believe that former senior employees of local authority children’s services departments will often be well placed to conduct independent investigations as long as they do not carry out that function on behalf of a school in their former local authority area. We believe that the criteria qualifying a person to conduct investigations should be relevant expertise and objectivity. We are not persuaded that it is conducive to confidence in the process for handling allegations if independent investigators appear to be sourced from organisations which might have a particular viewpoint. Nor are we convinced that this is a task which should be contracted out to unknown third parties.

Responsibility for commissioning investigations

72. We found that there seemed to be no definition of who had responsibility for either deciding whether or not to hold an independent investigation or deciding who should be asked to conduct it. There is no clear statement in DCSF guidance; and witnesses seemed unsure or said that it was “ad hoc” or would depend on the severity of the allegation.¹²³ Clare Collins, the Chair of the National Governors Association, implied that, if the headteacher was the subject of the allegation, “the governors would have to work closely with the local authority as to who is allocated the role of the independent investigator” and that “they would be dependent on it to identify one”.¹²⁴

73. We asked the Department who was responsible for decisions on whether to hold an investigation and who should carry it out. The Department replied that “it would normally be the decision of the employer as to whether an independent investigation is done and, if so, who should carry it out”, and it pointed towards relevant published guidance:

“In some such cases¹²⁵ further enquiries will be needed to enable a decision about how to proceed. If so, the local authority designated officer should discuss with the

121 See <http://cymru.gov.uk/publications/accessinfo/drnewhomepage/educationdrs2/educationdrs2008/1935514/?skip=1&language=en&ts=4>

122 <http://www.servocadream.com/investigations.asp>

123 Ms Collins Q 58; Sir Steve Bullock Q 58

124 Q 64

125 Cases where it is clear that an investigation by police and/or enquiries by social care are not necessary, or the strategy discussion or initial evaluation decides that is the case

head teacher/principal and chair of governors how and by whom the investigation will be undertaken. In straightforward cases that should normally be undertaken by a senior member of the school or FE college staff. However, in other circumstances, lack of appropriate resource within a school or FE college, or the nature of complexity of the allegation, will require an independent investigator.”¹²⁶

We find the guidance hazy about where responsibility lies for these decisions; and the Department’s statement to us that these decisions would normally be taken by the employer suggests that in some cases they would fall to the local authority and in others to the governing body.

74. We recommend that there should be a clear presumption in all schools that decisions on whether or not to appoint an independent investigator to gather any information necessary to inform disciplinary proceedings, and on who should be appointed, should be taken by the chair of governors. Local authorities will have a direct interest, given their statutory role to safeguard children and sometimes in a non-statutory role as employer. Headteachers may come under especial pressure when an allegation is made and may in any case be the subject of the allegation. We believe that governors, properly trained and equipped with advice, will be more objective than either local authorities or headteachers. We would expect the chair of governors to consult closely with the headteacher, who will have first-hand knowledge of the pupil or parent making the allegation, and with the local authority, in reaching any decision.

Disciplinary hearings

75. Governing bodies set up disciplinary panels when required and have a duty to ensure that equal weight is given to all evidence presented and that any hearing is fair. Governors rely largely on advice from others—principally the headteacher and the local authority—in conducting hearings.¹²⁷ The burden of proof in disciplinary hearings requires that the evidence demonstrates, on the balance of probabilities, that there is a strong likelihood that the individual is unsuitable for his or her current position.¹²⁸

76. Some of those who submitted evidence were impressed by the standards of disciplinary hearings. The “Voice” union noted only few examples of unsatisfactory procedures;¹²⁹ and the Association of School and College Leaders believed that the operation of panels was “generally satisfactory”.¹³⁰ However, the approach taken by governing bodies in giving credibility to witnesses and in weighing evidence was described in one written submission as regularly being “inadequate” and “shockingly unfair”.¹³¹ The National Governors’ Association told us of anecdotal evidence that the quality of advice given was variable, and it proposed that local authorities establish a pool of clerks to advise on procedure.¹³² We

126 *Safeguarding Children and Safer Recruitment in Education*, DCSF, 2006, paragraph 5.21

127 Ev 37

128 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May 2009, para 73

129 Ev 62

130 Ev 38

131 Memorandum from Jenni Watson [not printed]

132 Ev 37

agree. **We recommend that local authorities form a pool of procedural advisers to attend disciplinary hearings and to advise school governors on the conduct of those hearings.**

77. One headteacher who had appeared before a disciplinary panel suggested that if allegations were serious, the accused should be entitled to take a legal representative into the hearing.¹³³ When we raised this suggestion with one witness, we were told that this could happen already, depending on the status of the school and on whether the governors of the school were willing to accept legal representation.¹³⁴ We note that disciplinary panels would be expected to follow ACAS guidelines on the conduct of proceedings and would be expected to allow the employee under investigation to be accompanied by a colleague or union representative.¹³⁵ FACT told us that it was “exceptionally rare” for an employer to permit a solicitor to attend such meetings.¹³⁶

78. Our attention was drawn to a judgment in the High Court in March 2009, relating to a school employee who had been denied legal representation both at a disciplinary hearing before a panel of the school’s governors and at a later hearing of his appeal against dismissal. The employee had been accused of sexual misconduct against a pupil and, following dismissal, had been referred to the Secretary of State to consider whether to use his powers under section 142 of the Education Act 2002 to prohibit the employee from working with children in educational establishments. At judicial review, Mr Stephen Morris QC took the view that the employee could not fairly have been expected to represent himself when the nature of the allegations, and the potential consequences of a ‘section 142’ direction, were so serious; and he deemed that the presence of a colleague or trade union representative at the hearings offered insufficient protection. He accordingly found that the school’s refusal to permit legal representation had denied the employee a right to a fair hearing.¹³⁷

79. Having considered the evidence, **we are persuaded that all school staff subject to an allegation should have the right to have legal representation or to be accompanied by a trade union representative, whichever they prefer, in all disciplinary hearings.**

80. **Once a decision has been taken to instigate disciplinary proceedings, employers should consider carefully what information, if any, should be communicated to parents and staff.**

81. The NUT pointed out that disciplinary procedures were a particular problem for supply teachers and that, while schools would share details of the allegation with the supplying agency, neither the agency nor the school would institute disciplinary procedures. Supply teachers therefore remained in limbo, unable to have the case heard and to have an opportunity to clear their name.¹³⁸ **A supply teacher subject to an**

133 Submission from Mick Madden, Ev 65

134 Fiona Hammans Qq 74 to 76

135 Ev 80

136 Ev 6

137 See *The Times* 24 April 2009; memorandum from Jenni Watson para 11 [not printed]

138 Ev 6; also Chris Keates, Q 14

allegation should be treated on an equal basis as a full member of staff and should be investigated by the school at which the allegation is made. The results of any investigation should be reported to the employing agency and to the Independent Safeguarding Authority.

Guidance

82. The complexity of a process which needs to adapt to many different forms of allegation is inescapable. However, we were struck by the many layers of overlapping guidance, including:

- *Safeguarding Children and Safer Recruitment in Education*: DCSF guidance for people working with children. Chapter 5 deals with handling allegations;
- *Working Together to Safeguard Children*: DCSF guidance for practitioners and managers. Appendix 5 deals with handling allegations;
- *Handling Allegations of Abuse made against adults who work with children and young people*: additional guidance prepared by DCSF for practitioners and currently subject to consultation;
- Guidance issued jointly in 2002 by The National Employers' Organisation for School Teachers (NEOST)—the employer representative body concerned with conditions of service for teachers in maintained schools—and teacher unions on practice and procedure in dealing with allegations; and
- Guidance produced locally by local authorities or Local Safeguarding Children Boards

While all these publications will have their strengths, a head teacher suddenly faced with a potentially serious allegation might have to trawl through several of them before being satisfied that they were equipped with the necessary knowledge to reach an informed decision. Some written submissions to the inquiry cited as current guidance publications which have in fact been superseded, indicating further layers of confusion. Clare Collins, Chair of the National Governors' Association said that "I cannot emphasise too much how difficult it can be to get hold of the information; as a chair of governors you won't have that on your shelf. It will be on a website somewhere, it might be password protected..."¹³⁹

83. When we asked the witness representing the NUT whether there should be a simple guide for headteachers on what to do when an allegation is made, she said that there used to be a short guide and that "it would be very useful if there was one place – a guide that a head teacher can pull off the shelf immediately if there is a problem".¹⁴⁰ Ms Collins agreed that "a small booklet" would be "incredibly useful" for governors.¹⁴¹

84. We recommend that the Department should take the opportunity offered by the present consultation on guidance for practitioners to rationalise the guidance which it

139 Q 61

140 Qq 19 and 20

141 Q 61

produces on handling allegations. The Department should publish a very short handbook, summarising procedures and the criteria to be taken into account at key decision points, and containing references to a single authoritative and detailed volume of guidance drawn up in consultation with local authority bodies, children’s organisations and teacher unions.

85. We also note evidence that, although guidance is already in place, it is not always followed. The NSPCC told us that schools were often unfamiliar with managing procedures for dealing with allegations.¹⁴² One of the reasons is likely to be a lack of training: the National Governors’ Association urged that head teachers and chairs of governors be trained on handling allegations as part of their induction.¹⁴³ Many years might elapse, however, between induction and being required to handle an allegation. We note examples of good practice by local authorities in overcoming this by supporting governors in establishing disciplinary panels and following procedures.¹⁴⁴

86. The General Teaching Council for England suggested that “local authorities and personnel providers should be considering an extensive programme of support and training to ensure that schools operate all the relevant procedures in relation to allegations against school staff effectively, promptly and fairly”.¹⁴⁵ We agree with the principle behind this suggestion. **Employers of school staff should be more energetic in ensuring that key figures in each school are trained in how to handle allegations and that they have access to support services, including a helpline. We also believe that employers should carry out more systematic reviews of how individual allegations were handled, to assess in particular:**

- **Whether a suspension (and the length of that suspension) was justified;**
- **Whether the allegation was handled expeditiously; and**
- **Whether the accused received the right level of support.**

We see this as one of the most important recommendations in this Report.

4 Handling records of allegations

87. Records of allegations are kept by employers in individual personnel records and, if the allegation has been referred to the police for investigation, by police forces. The information contained in those records, and the way in which it is presented, can have a direct impact on a person’s potential to secure appointment to other posts involving work with children. In effect, it can determine their career mobility; and so the treatment of records of allegations is a fundamental issue for teacher unions.¹⁴⁶

142 Ev 73

143 Clare Collins Q 43

144 NSPCC memorandum, Ev 73

145 Ev 43

146 Ms Keates Q 29

Personnel records

88. The Department's guidance on retention of details of allegations in personnel records states that:

“It is important that a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person's confidential personnel file, 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 if the person has moved on. It will provide clarification in cases where a future CRB Disclosure reveals information 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 person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer”.¹⁴⁷

89. As several of those who contributed to this inquiry observed, the policy on retention of records of allegations, whatever their outcome, flows from the Soham murders and the recommendations of the Bichard Inquiry which followed.¹⁴⁸ The NSPCC pointed out that Ian Huntley, before committing the Soham murders, had had nine separate allegations made against him. These allegations had ranged from sexual assault to rape; all but one had been investigated. The NSPCC said that this demonstrated the importance of retaining records of allegations, which may be unsubstantiated only because of a lack of evidence or because allegations had been withdrawn.¹⁴⁹

90. A contrary view was put forward by the National Governors' Association (NGA), which said in its written submission that “there is no justification for retaining details [on a personnel file] of an allegation which has been shown to be false”.¹⁵⁰ In oral evidence, the Chair of the NGA clarified that the use of the word “false” in this context referred to cases where it had been demonstrated that the alleged events could not have taken place and the member of staff had been totally exonerated.¹⁵¹ We note also that the former Lord Chancellor, the Rt. Hon Lord Falconer of Thoroton QC, when speaking at the 2007 conference of the National Association of Head Teachers, said that “where it's demonstrably the case that the allegation is false, there should be greater discretion as to whether it's recorded”.¹⁵²

91. Other factors need to be taken into account before we can reach a conclusion on this issue. We deal with two such factors below: the terminology used in personnel records and the use made of those records.

147 *Safeguarding Children and Safer Recruitment in Education*, DCSF, 2006, para 5.10

148 For instance the ASCL, Ev 39

149 Ev 33

150 Ev 36. See also memorandum from Mick Madden, Ev 65

151 Clare Collins Q 84

152 <http://www.timesonline.co.uk/tol/news/uk/education/article1756390.ece>

Terminology used in personnel records

92. It is important to be rigorous in the terminology used to describe the outcome of cases. An inexact description of the outcome of an investigation into an allegation could wrongly suggest an element of guilt. A record of “no evidence to support the allegation” might be factually correct but does not indicate whether there was no evidence simply because the allegation had absolutely no foundation or whether the allegation was deemed to have some credibility but that there was no evidence to support it. Describing an allegation as “false” is similarly ambiguous, giving little idea as to whether the allegation was unfounded, malicious or unsubstantiated, and we were told that confusion had arisen as a result.¹⁵³

93. In the supplementary guidance for practitioners issued in draft in May 2009 for consultation, the Department has set out definitions of some of the key terms used for outcomes of investigations:

- “An unsubstantiated allegation means that there is insufficient identifiable evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- The term ‘unfounded’ means that there is no evidence or proper basis which supports the allegation being made, or there is evidence to prove that the allegation is untrue. There is the possibility that the allegation may be malicious (see below), but it might also indicate that the person making the allegation had misinterpreted the incident or was mistaken about what he/she saw, or was not aware of all the circumstances.
- The term ‘malicious’ implies that an allegation, either wholly or in part, has been made with a deliberate intent to deceive or cause harm to the person subject to the allegation”.¹⁵⁴

We note that the NSPCC favours the use of these terms rather than the word “false” to describe allegations which lead to no further action.¹⁵⁵

94. We commend the Department for making clear, in an Annex to new draft guidance for practitioners, the distinctions between terms used to describe outcomes of investigations. However, the phrase ‘unsubstantiated allegation’ carries with it a whiff of guilt. It should be used with particular care and only when no other term will suffice. The Department should also make clear in the body of the guidance that those who record outcomes of investigations should use those terms in describing allegations which lead to no further action, to avoid any ambiguity.

Use of personnel records

95. School leaders face decisions on whether or not to reveal details of an allegation in a reference provided to a prospective employer. The DCSF told us that it will revise guidance

153 Memorandum from Voice, Ev 63

154 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May 2009, Annex A

155 Ev 74

to make it clear that allegations which have been demonstrated to be “completely untrue” do not need to be included in teachers’ references.¹⁵⁶ While this is a positive and welcome step which allows more discretion, headteachers will still be required to decide whether or not an allegation has been demonstrated to be completely untrue. Many, we believe, will err on the side of caution.

96. It may be that personnel records are also taken into account by the Independent Safeguarding Authority, established under the Safeguarding Vulnerable Groups Act 2006 to assess the suitability of people to work with children and vulnerable adults. There appear to be three main elements of the ISA’s task:

- The Authority will make independent decisions on cases referred to it by employers who have ceased to use a person’s services for reasons of misconduct where there has been harm or risk of harm to a child.¹⁵⁷ Those deemed by the Authority to be unsuitable to work with children will be placed on a list barring them from certain activities and workplaces;
- From November 2010, all new workers seeking to work paid or unpaid with children (including school staff) must gain ISA registration before starting work; and
- From January 2011 onwards, all members of the existing workforce will need to apply for ISA registration to continue working in their post. This process is expected to take five years.¹⁵⁸

97. Applications for registration by the ISA are to be made through the Criminal Records Bureau, which will gather conviction and caution information as well as any information held locally by police forces and pass it to the ISA. The ISA will consider the information and decide whether or not the individual poses a risk of harm and should be barred. The individual will then be invited to make representations before a final decision is taken.¹⁵⁹

98. It was not clear to us, from the information supplied by the Department or that made available by the ISA on its website, whether the ISA will rely upon information from personnel records as well as information supplied by the Criminal Records Bureau. We believe that it should do so. **The decisions of the Independent Safeguarding Authority on the suitability of individuals to work with children should be made on all available and relevant information, including that held in their employers’ personnel records.**

99. The decision to establish the Independent Safeguarding Authority has been taken, and its work has begun. The Authority will now need to be trusted to make fair decisions on registration and barring, based on its expertise and taking into account available evidence and representations from those being assessed. We appreciate the desire of those who have been the subject of a totally unfounded allegation to clear their name and have the allegation deleted from their personnel records. The NASUWT pointed out, however, that

156 Ev 81

157 *Handling allegations of abuse made against adults who work with children and young people*, DCSF consultation launched on 13 May 2009, para 85

158 Supplementary memorandum from the DCSF, Ev 82

159 Supplementary memorandum from the DCSF, Ev 82

some unfounded allegations might lead to a disciplinary procedure which, even if it found that there was no case to answer, would appear in personnel records; so removal of the allegation would achieve little.¹⁶⁰ There is also value in the consistency of having decisions on whether or not to retain particular records taken by a single body with the necessary expertise. **We believe that the Independent Safeguarding Authority should take responsibility for deciding whether allegations recorded in a personnel file of a member of school staff should be retained or expunged. We therefore recommend that records of all such allegations should be retained by employers unless and until the Authority authorises their deletion.**

Police records and disclosure

The content of enhanced disclosures

100. It is mandatory for all newly appointed school staff to be subject to an enhanced disclosure Criminal Records Bureau (CRB) check.¹⁶¹ Whereas information disclosed under a standard disclosure CRB check will list convictions, cautions, reprimands and final warnings and will indicate whether any information on the applicant is held on lists of people barred from working with children or vulnerable adults,¹⁶² chief officers of police are obliged to provide supplementary information in response to a request for an Enhanced Disclosure, namely “any other information which a chief police officer considers might be relevant to the job application in question”. This will be non-conviction or “soft” information which is held locally in police records and which “is considered by the police to represent a factual record of previous events that an employer in the most sensitive type of occupation should be aware of in making an employment decision affecting the most vulnerable groups of people”.¹⁶³

101. In assessing what information to disclose for an enhanced disclosure CRB check, chief police officers are guided by Home Office Circular 5/2005¹⁶⁴ and by the Quality Assurance Framework, described as “a standardised approach to processing local intelligence information relating to a disclosure application held by police force disclosure units”.¹⁶⁵ Mr Gargan, Assistant Chief Constable at Thames Valley Police, told us that the Quality Assurance Framework included “forms of words” and model ways of articulating the decision-making rationale for those who prepare disclosures; and he believed that it was contributing to “increasing levels of uniformity” across police forces in handling disclosures.¹⁶⁶

160 Chris Keates Q 28

161 School Staffing (England) (Amendment) Regulations as amended. “Newly appointed” is defined as meaning anyone who within the three months before his or her appointment has not worked in either a school in England which brought him or her into contact with children or any post they were appointed to since 12 May 2006 or an FE college in a position of an equivalent nature, defined in the Regulations. See *HC Deb* 2 June 2009 col. 447W

162 Information from Criminal Records Bureau website

163 *HC Deb*, 22 June 2009 col. 610w

164 *Criminal Records Bureau: Local checks by police forces for the purpose of enhanced disclosure*

165 *HC Deb*, 22 June 2009, col. 610W

166 Q 81

102. Several submissions expressed concerns about the disclosure of “soft” information. The “Voice” union reported that its members had sometimes been unhappy about the content, with unproven allegations appearing as fact;¹⁶⁷ and the NUT said that Home Office guidance on such disclosures should be more robustly applied.¹⁶⁸ In one case recently debated in the House, it was reported that the “soft information” disclosed by the police force contained no fewer than 14 factual errors.¹⁶⁹

103. An applicant for a post who undergoes a CRB enhanced disclosure will not know in advance what “soft” information held on police records is likely to be disclosed. The NUT reported that its members had quite often not appreciated what information was on their record, and the union sometimes advised people thinking of moving from one post to another to find out first, through a data subject access request, what information was on their record.¹⁷⁰ Mr Kaufman, a solicitor who regularly acts on behalf of school staff subject to an allegation, pointed out that solicitors’ files or court transcripts were not kept indefinitely and that an applicant would, after perhaps ten years, lose access to information which might help them prove that an allegation which had appeared on a CRB enhanced disclosure check had in fact been unfounded.¹⁷¹

Terminology

104. As with personnel records, the terminology used by police officers both in recording the outcome of an investigation for police records and in wording disclosures of “soft” information in response to a CRB Enhanced Disclosure check was criticised. The Association of Teachers and Lecturers told us that “each local police force records what they consider to be relevant to the post an individual applies for. There is no uniformity in the type or manner in which a local police force records details of an allegation. To ensure uniformity, guidance should be provided for local police forces on the information to be included in an enhanced disclosure form”.¹⁷²

105. The NASUWT noted an apparent reluctance by police officers investigating allegations to record as an outcome that there was “no case to answer” even when the allegation was fabricated, preferring instead to say that there was “not enough evidence to proceed” or that “no charges [were] brought but the matter was referred to the employees to deal with internally”.¹⁷³ We agree that the latter phrases imply that the alleged incident may have occurred but that there was not enough evidence to prove it. **The guidance prepared by the Department for practitioners on the distinctions in terminology for different outcomes of an investigation has value for police officers and should be either disseminated to police forces as it stands or incorporated into existing police guidance.**

167 Ev 64

168 Ev 8

169 *HC Deb* 1 April 2009, col. 1016

170 Amanda Brown Q 30

171 Q 31

172 Ev 70

173 Ms Keates Q 28 and NASUWT Ev 15; see also Amanda Brown, Q 28

Protecting the subject of the disclosure

106. When we questioned Mr Gargan on how police officers handled enhanced disclosures, he said that decisions on disclosure in his force were taken only by chief officers and that it was the role of those officers to challenge the phrasing of a proposed disclosure. He carried out that work himself and, in the majority of cases, he authorised disclosure of additional information. Five such disclosures had been made in relation to teachers in the Thames Valley police area in 2009 so far: three related to violence, one to a matter of public indecency and one to grooming of a young woman in the workplace.¹⁷⁴ Mr Gargan maintained that disclosures which strongly implied guilt were made “only in the most exceptional circumstances” and were not made “on the back of no evidence”. He gave as examples cases which would have proceeded but which had been dropped because the victim had died or the witness had emigrated, or because the case had run out of time.¹⁷⁵

107. Mr Barnes, National Secretary of FACT (Falsely Accused Carers and Teachers) pressed for a method of appeal against information which was included on CRB checks.¹⁷⁶ Mr Gargan told us that there was already an avenue of appeal through the Criminal Records Bureau, through which police forces could be asked to reconsider the “soft” information disclosed.¹⁷⁷ The Bureau’s disputes procedure enables applicants to challenge a disclosure if he or she believes that the content of the application (or elements of it) are incorrect.¹⁷⁸

108. An alternative means of protecting school staff from the disclosure of unfounded allegations was put to us by Amanda Brown, giving oral evidence on behalf of the NUT. She suggested that there might be a role for the Independent Safeguarding Authority in seeing a disclosure of “soft” information before it was sent to the applicant, investigating any allegations which were referred to in the disclosure, and removing any reference from the disclosure if the Authority was satisfied that the subject of the disclosure was “safe”.¹⁷⁹ Chris Keates, General Secretary of the NASUWT, appeared to support this idea when it was raised in evidence.¹⁸⁰

109. We recommend that the Independent Safeguarding Authority assess proposed disclosures of “soft” information relating to people working or applying to work with children or vulnerable people.

110. The NASUWT argued that guidance was needed for prospective employers on what weight should be given to “soft” information supplied in CRB enhanced disclosures.¹⁸¹ The union told us that “the climate in schools at the moment is such that if your enhanced

174 Q 71 and Q 81

175 Q 82

176 Q 31

177 Q 72

178 www.crb.gov.uk

179 Q 28

180 Q 29

181 Ev 16

disclosure does not come back completely clear, people won't take the risk of appointing you. If you are a teacher who has had an allegation made against you and you have been exonerated, that information is passed on, and your career will still be blighted".¹⁸²

111. We note a well-publicised case in which a person had attempted to challenge at judicial review the disclosure of allegations contained in "soft" information supplied to a prospective employer, on the basis that they lacked credibility and that no action had been taken following police investigation. In his judgment, Lord Justice Richards dismissed the claim, having concluded that the allegations had enough substance to make it reasonable for the chief officer of police making the disclosure to conclude that they might be true; but he was troubled by the prospective employer's insistence that employees should have a "clean" CRB certificate:

"The legislation imposes a relatively low threshold for disclosure in the certificate in order to enable an employer to make a properly informed decision. But it is important that employers understand how low that threshold is and the responsibility that it places in practice upon them. A properly informed decision requires consideration not only of the information disclosed in the certificate but also of any additional information or explanation that the employee may provide. The operation of a blanket policy of insisting on a "clean" certificate leaves no room for taking into account what the employee may have to say."¹⁸³

We agree, and we question whether an employer should have the right to reject an applicant or appointee simply on the basis of unproven and quite possibly unfounded "soft" information supplied by chief officers for Enhanced Disclosure CRB checks. The Government should examine this practice and either justify permitting it or take steps to prevent it.

182 Chris Keates Q 28

183 *R (on the application of Pinnington) v Chief Constable of Thames Valley Police* [2008] EWHC 1870 (Admin). See also Ev 60

Conclusions and recommendations

1. We believe that school staff subject to allegations should be treated according to acknowledged principles of justice and that a person accused of wrongdoing should be seen as innocent until proven guilty. The aim should always be to deal with allegations speedily, effectively and justly, to minimise the cost and the impact upon those accused. (Paragraph 6)

The impact of allegations

2. We believe that it is unsatisfactory that there are no comprehensive data compiled on a regular basis for allegations against school staff. We recommend that the following data should be collected annually from all schools:
 - The number of allegations referred to local authorities;
 - The number of allegations leading to police investigation
 - The number of allegations leading to suspension of the staff member concerned; and
 - Outcomes, including those that lead to criminal convictions and dismissal.

As numbers will be small, we do not believe that this would be an unduly onerous requirement. (Paragraph 21)

The investigatory process

3. We question whether there is a need for a lengthy investigation of an allegation by local authority social services if a police investigation has concluded that no crime has been committed or that there is no case to answer. (Paragraph 26)
4. We recommend that representatives of the Association of Chief Police Officers, local authorities and teacher unions meet to agree a protocol for the recording and sharing of information. (Paragraph 27)

The first stages of investigation

5. We believe that headteachers should have more discretion to intervene early in cases and to handle allegations internally if they are satisfied that there is no prospect of harm being caused to the child. We recommend that the Department amend guidance to those working with children to identify circumstances in which headteachers can justifiably handle allegations internally. We are not convinced, however, that the same discretion should apply to governors considering an allegation against a headteacher. (Paragraph 32)

Police use of powers of arrest

6. We recommend that the Government should undertake a one-off exercise to find out how many arrests were made over a twelve-month period of school staff following an allegation of improper conduct. Police forces should review those cases to assess whether arrest had been justified. We remind chief constables that it is their responsibility to ensure that officers use their power of arrest sensitively and judiciously. (Paragraph 45)

Suspension of staff

7. The lack of any statement in the Department's draft guidance for practitioners on keeping the length of suspension to a minimum is an omission which should be rectified. (Paragraph 49)
8. We believe that it would be best practice for a headteacher to discuss suspension with the accused before any decision is taken, while clearly reserving the right to suspend. (Paragraph 52)
9. We welcome the steps taken by the Department to reiterate guidance on when suspension of a member of staff is appropriate and on possible alternatives. We recommend that guidance should remind users that the lawfulness of suspension can be challenged and that suspension may be held by the courts not to be a neutral act. We also recommend that each decision to suspend a member of staff subject to an allegation should be reviewed once proceedings have run their course, to assess whether the decision had, in retrospect, been justified. (Paragraph 54)
10. Guidance to headteachers and to governors should specify that any bar on contact between an accused teacher and other school staff should apply on school premises only. (Paragraph 56)
11. We welcome the stress placed by the Department in its draft guidance for practitioners on making constant and appropriate support available to members of staff subject to allegations. We remind local authorities, employers and school leaders of their duty of care to school staff and of the importance of continuing to treat suspended members of staff as full-time employees fully involved in the work of the school. (Paragraph 58)

Anonymity for those subject to allegations

12. We are not sure that a right to anonymity up until the point of court decision would deliver a significant benefit to those subject to allegations. Even if it were to succeed in preventing details of an allegation from being published or broadcast by the local media, it might do little to stop details being circulated amongst children and parents. The argument that anonymity up until the point of court decision could remove the potential for more witnesses or fellow sufferers to become aware of the charges and to come forward is a strong one. On the other hand, exposure of an allegation under investigation will almost invariably tarnish the reputation of the member of staff concerned, and the principle of 'innocent until proven guilty' will be

undermined. We recommend that there should be further consideration by the Department of the case for statutory anonymity for school staff subject to allegations. (Paragraph 63)

Independent investigations

13. We believe that an investigation must not be an exercise purely to assemble a case against the staff member concerned. (Paragraph 67)
14. We believe that former senior employees of local authority children's services departments will often be well placed to conduct independent investigations as long as they do not carry out that function on behalf of a school in their former local authority area. We believe that the criteria qualifying a person to conduct investigations should be relevant expertise and objectivity. We are not persuaded that it is conducive to confidence in the process for handling allegations if independent investigators appear to be sourced from organisations which might have a particular viewpoint. Nor are we convinced that this is a task which should be contracted out to unknown third parties. (Paragraph 71)
15. We recommend that there should be a clear presumption in all schools that decisions on whether or not to appoint an independent investigator to gather any information necessary to inform disciplinary proceedings, and on who should be appointed, should be taken by the chair of governors. Local authorities will have a direct interest, given their statutory role to safeguard children and sometimes in a non-statutory role as employer. Headteachers may come under especial pressure when an allegation is made and may in any case be the subject of the allegation. We believe that governors, properly trained and equipped with advice, will be more objective than either local authorities or headteachers. We would expect the chair of governors to consult closely with the headteacher, who will have first-hand knowledge of the pupil or parent making the allegation, and with the local authority, in reaching any decision. (Paragraph 74)

Disciplinary hearings

16. We recommend that local authorities form a pool of procedural advisers to attend disciplinary hearings and to advise school governors on the conduct of those hearings. (Paragraph 76)
17. We are persuaded that all school staff subject to an allegation should have the right to have legal representation or to be accompanied by a trade union representative, whichever they prefer, in all disciplinary hearings. (Paragraph 79)
18. Once a decision has been taken to instigate disciplinary proceedings, employers should consider carefully what information, if any, should be communicated to parents and staff. (Paragraph 80)
19. A supply teacher subject to an allegation should be treated on an equal basis as a full member of staff and should be investigated by the school at which the allegation is

made. The results of any investigation should be reported to the employing agency and to the Independent Safeguarding Authority. (Paragraph 81)

Guidance

20. We recommend that the Department should take the opportunity offered by the present consultation on guidance for practitioners to rationalise the guidance which it produces on handling allegations. The Department should publish a very short handbook, summarising procedures and the criteria to be taken into account at key decision points, and containing references to a single authoritative and detailed volume of guidance drawn up in consultation with local authority bodies, children's organisations and teacher unions. (Paragraph 84)
21. Employers of school staff should be more energetic in ensuring that key figures in each school are trained in how to handle allegations and that they have access to support services, including a helpline. We also believe that employers should carry out more systematic reviews of how individual allegations were handled, to assess in particular:
 - Whether a suspension (and the length of that suspension) was justified;
 - Whether the allegation was handled expeditiously; and
 - Whether the accused received the right level of support.

We see this as one of the most important recommendations in this Report. (Paragraph 86)

Personnel records

22. We commend the Department for making clear, in an Annex to new draft guidance for practitioners, the distinctions between terms used to describe outcomes of investigations. However, the phrase 'unsubstantiated allegation' carries with it a whiff of guilt. It should be used with particular care and only when no other term will suffice. The Department should also make clear in the body of the guidance that those who record outcomes of investigations should use those terms in describing allegations which lead to no further action, to avoid any ambiguity. (Paragraph 94)
23. The decisions of the Independent Safeguarding Authority on the suitability of individuals to work with children should be made on all available and relevant information, including that held in their employers' personnel records. (Paragraph 98)
24. We believe that the Independent Safeguarding Authority should take responsibility for deciding whether allegations recorded in a personnel file of a member of school staff should be retained or expunged. We therefore recommend that records of all such allegations should be retained by employers unless and until the Authority authorises their deletion. (Paragraph 99)

Police records and disclosure

25. The guidance prepared by the Department for practitioners on the distinctions in terminology for different outcomes of an investigation has value for police officers and should be either disseminated to police forces as it stands or incorporated into existing police guidance. (Paragraph 105)
26. We recommend that the Independent Safeguarding Authority assess proposed disclosures of “soft” information relating to people working or applying to work with children or vulnerable people. (Paragraph 109)
27. We question whether an employer should have the right to reject an applicant or appointee simply on the basis of unproven and quite possibly unfounded “soft” information supplied by chief officers for Enhanced Disclosure CRB checks. The Government should examine this practice and either justify permitting it or take steps to prevent it. (Paragraph 111)

Formal Minutes

Monday 6 July 2009

Members present:

Mr Barry Sheerman, in the Chair

Annette Brooke
Paul Holmes

Fiona Mactaggart
Helen Southworth

Draft Report (Allegations Against School Staff), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 111 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Several Memoranda were ordered to be reported to the House for printing with the Report.

Several Memoranda were ordered to be reported to the House for placing in the Library and Parliamentary Archives.

Ordered, That embargoed copies of the report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 8 July at 9.15 am

Witnesses

Wednesday 17 June 2009

Page

Michael Barnes, National Secretary, FACT (Falsely Accused Carers and Teachers); **Amanda Brown**, Head of Employment, Conditions and Rights Department, National Union of Teachers; **Paul Kaufman**, Partner, Wiseman Lee LLP (Solicitors); **Chris Keates**, General Secretary, NASUWT; and **Julian Stanley**, Chief Executive, Teacher Support Network. Ev 25

Sir Steve Bullock, Chair, Local Government Employers, Local Government Association; **Clare Collins**, Chair, National Governors' Association; **Nick Gargan**, Association of Chief Police Officers; **Fiona Hammans**, Association of Schools and College Leaders; **Kathryn James**, Senior Assistant Secretary, Policy, Politics, Education, National Association of Head Teachers; and **Alan Meyrick**, Registrar and Deputy Chief Executive, General Teaching Council for England. Ev 43

List of written evidence

1	FACT (Falsely Accused Carers and Teachers)	Ev 1: Ev 5
2	National Union of Teachers (NUT)	Ev 6
3	Paul Kaufman	Ev 8
4	NASUWT	Ev 12
5	Teacher Support Network	Ev 22
6	Local Government Association (LGA)	Ev 34
7	The National Governors' Association (NGA)	Ev 35
8	The Association of School and College Leaders	Ev 38
9	National Association of Head Teachers	Ev 39
10	The General Teaching Council for England (GTCE)	Ev 41
11	Mark Jeffery	Ev 54
12	Nigel Morris	Ev 57
13	John Pinnington	Ev 57
14	Voice, The Union for Education Professionals	Ev 61
15	Mick Madden	Ev 64
16	Andrew Walker	Ev 67
17	The Association of Teachers and Lecturers (ATL)	Ev 69
18	NSPCC	Ev 71: Ev 74
19	Professor Pat Sikes, School of Education, University of Sheffield and Dr Heather Piper, Senior Research Fellow, Institute of Education, Manchester Metropolitan University	Ev 75
20	Department for Children, Schools and Families (DCSF)	Ev 78: Ev 82

List of unprinted evidence

The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Jim Pailing

Christine Hutchinson

Andrew Jameson

Roger Lock

Jenni Watson

Jane Elizabeth Watts

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2008–09

First Report	Public Expenditure	HC 46 (HC 405)
Second Report	The Work of the Committee in 2007–08	HC 47
Third Report	Looked-after Children	HC 111-I and II (HC 787)
Fourth Report	National Curriculum	HC 344-I and II (HC 645)
Fifth Report	Allegations Against School Staff	HC 695

Session 2007–08

First Special Report	Creative Partnerships and the Curriculum: Government Response to the Eleventh Report from the Education and Skills Committee, Session 2006–07	HC 266
Second Special Report	Special Educational Needs: Assessment and Funding: Government Response to the Tenth Report from the Education and Skills Committee, Session 2006–07	HC 298
First Report	Children and Young Persons Bill [Lords]	HC 359 (HC 711)
Second Report	The Department for Children, Schools and Families and the Children's Plan	HC 213 (HC 888)
Third Report	Testing and Assessment	HC 169-I and II (HC 1003)
Fourth Report	The Draft Apprenticeships Bill	HC 1082 (HC 259 of Session 2008–09)

Oral evidence

Taken before the Children, Schools and Families Committee on Wednesday 17 June 2009

Members present:

Mr Barry Sheerman
(Chairman)
Annette Brooke
Mr David Chaytor

Paul Holmes
Mr Graham Stuart
Mr Edward Timpson
Derek Twigg

Memorandum submitted by FACT (Falsely Accused Carers and Teachers)

1. OPENING STATEMENT

1.1 FACT is grateful for the opportunity to report on issues relating to allegations made in respect of school staff.

2. SHORT SUMMARY

- This paper examines various issues relating to allegations made against school staff from the perspective of FACT members, most of whom contact us after they have been accused of alleged child abuse.
- Attention is drawn to the increasing number of school related referrals received by FACT through its help line and other support services. However, we believe it would be wrong to conclude that standards of conduct in schools are falling.
- FACT calls for detailed research into the scale and nature of allegations being made against school staff, and into investigative practice.
- FACT is generally critical of the present system of investigating cases of alleged abuse which is “belief” rather than “evidence driven”.
- FACT calls for improved training of investigating officers and the need for a more ethical “evidence based” model of investigative practice.
- FACT is very sceptical of the suggestion that no record should be placed on the staff member’s file where a false allegation has been made and believes it will have very little impact, partly because of problems of defining “false”, and partly because police forces now routinely record the fact that an allegation of abuse has been made against a teacher on enhanced certificates of disclosure issued by the CRB.
- We do not believe that the morale of teachers will improve until there has been root and branch reform of the CRB system.

3. BACKGROUND INFORMATION

3.1 FACT (Falsely Accused Carers and Teachers) founded in 1999 is a UK wide, membership based, voluntary organisation that exists primarily to:

- (a) support carers, teachers and other professionals (ie paid personnel) who maintain they have been falsely accused, or wrongly convicted of abuse or misconduct;
- (b) lobby for change in investigative practice and in the criminal justice system; and
- (c) encourage and/or promote research into contested allegations of historical sexual abuse.

4. THE NATURE OF ALLEGATIONS DEALT WITH BY FACT

4.1 Most of the people who contact FACT do so because they have been accused of gross misconduct (and are therefore vulnerable to being dismissed), or because they have been accused of child abuse and are therefore vulnerable to being prosecuted and/or banned from teaching.

4.2 In most cases these allegations manifest themselves in perceived personal or professional failings.

Personal failings

- inappropriate comments/conversation (eg bad language, sexually inappropriate comments, racist remarks etc);
- inappropriate physical contact (often relating to physical education, music and drama teaching);

- perceived over-strictness or over-friendliness; and
- blurring of professional and personal boundaries (particularly during extra curricula activities).

Professional failings

- poor classroom management and indiscipline;
- failure to comply with school's ethos, policies and procedures; and
- health and safety issues—usually following an inspection, or an accident or injury.

5. THE SCALE OF ALLEGATIONS GENERALLY

5.1 There have been several attempts by the Government, the press, trade unions and others, to quantify the scale of allegations made against school staff. Whilst such figures are useful they rarely compare like with like and often conflict and compete with each other. What is needed is some solid research into:

- the scale and of nature of allegations made, and by whom;
- attrition rates (in terms of those allegations which result in disciplinary action);
- outcomes (in terms of proven or not proven findings);
- the extent to which the primary allegation(s) may be regarded as being true or false; and
- the process of inquiry.

5.2 FACT acknowledges that the vast majority of school staff are not subject to accusations of misconduct and carry out their duties (teaching or otherwise) without ever being subject of a complaint. We think it is important to remember that most schools receive far more compliments than complaints.

5.3 We are a relatively small organisation but hardly a day goes by when we do not receive a referral from someone associated with an educational setting (including the private or voluntary sector), who strongly believes they have been unjustly accused of misconduct or child abuse.

5.4 The fact that the number of complaints made against school staff appears to be on the increase does not necessarily mean that standards are falling. It is much more likely that as we have become more child centred and education focused, expectations have been raised, and a well established “culture of concern” for children has encouraged individuals to express dissatisfaction in circumstances when previously, they would not.

6. THE SCOPE OF THE PROBLEM

6.1 Generally speaking, teachers expect to be complained about sometime in their career and regard “allegations” as an occupational hazard.

6.2 As in other fields, the fear of being falsely accused—especially of child abuse—is affecting recruitment. For example, many children now pass through school without being taught by a male teacher. The need for positive male role models is essential, not only for a rounded education but also for social development, especially in families where an absent father has led to deprivation and indiscipline.

6.3 Senior staff and heads are also vulnerable to complaints, particularly in schools where there has been a recent change of head and some resistance to change. It is a sad fact that we have conditioned people (including pupils) into believing that the easiest way of getting rid of an unwanted teacher is to complain about them. Pupils recognise this and openly talk about this prospect.

6.4 Perhaps the most worrying trend we have noticed in recent years is that female teachers are now being accused of sexual abuse whereas this would have been unheard of even three years ago. The reasons for this are not clear and may simply reflect the fact that female teachers are now in the majority in most schools.

6.5 Not all accusations relate to “in-school behaviour”. We have received a disturbing number of referrals from teachers (mostly men) who, whilst socialising with family/friends or alone, have come across a current (or former) pupil who later accused them of improper conduct—often involving a sexual element.

6.6 More recently we have had isolated referrals from accused governors, administrative staff, teaching assistants, ancillary staff, caretakers, taxi drivers and escorts, laboratory technicians, and peripatetic sports coaches. All have maintained their innocence. No one it seems is safe from the prospect of complaint.

6.7 In the majority of instances the allegations made have resulted in the person facing disciplinary action which sometimes has taken several months to resolve. In almost every case the person has been profoundly affected by the experience.

7. TO WHAT EXTENT ARE SCHOOL STAFF SUBJECT TO FALSE ALLEGATIONS OF CHILD ABUSE?

7.1 Whilst we would not wish to minimise the extent of the problem or the impact false allegations have on individuals and their families, we would caution against the tendency to view all unsubstantiated allegations as false. Allegations come in all shapes and sizes and are best viewed along a continuum ranging from wholly true—to partially true—to partially false—to wholly untrue.

7.2 We believe school staff, and teachers in particular, are especially vulnerable to being falsely or wrongly accused of misconduct. For reasons which cannot easily be explained this simple truth is rarely acknowledged by employers, and even less so by child protection workers. Both sides need to recognise that some allegations are true, and some allegations are false.

8. NEED FOR AN EVIDENTIAL APPROACH

8.1 In our experience those accused of child abuse are often left with the feeling that they have to prove their innocence before they can be believed. This is not how British justice works. A person is innocent until they are proven guilty. The burden of proof lies entirely with the investigating officer.

8.2 It is particularly noticeable in cases of alleged child abuse that the investigative bodies are less inclined to take an evidential approach when deciding guilt or innocence. In part this is due to a misguided sense of professionalism which requires investigators to believe the complainant regardless of the facts. “Why would the complainant lie, why would they put themselves through this ordeal?”

8.3 It is also due to the low evidential threshold that applies in such cases. In employment law, cases are determined on the balance of probability. However, when challenged, investigators are frequently unable to demonstrate how they weigh in the balance conflicting or competing evidence, and how they compute probability. Far too many confuse the theoretical possibility that the person might have committed the acts alleged (because, for example, they happened to be there at the material time) with probability.

8.4 To compound matters the evidential threshold in child abuse cases is based on “reasonable cause to suspect” [Section 47 Children Act 1989]. This legitimises a process that becomes belief driven rather than evidence driven with mere suspicion being sufficient to warrant intervention and to find fault.

8.5 There is a need for a new ethically based, evidence driven, approach to child protection.

9. SHOULD THE GUIDANCE AVAILABLE TO HEAD TEACHERS, SCHOOL GOVERNORS, POLICE AND OTHERS ON HOW TO HANDLE CLAIMS OF IMPROPER CONDUCT BY SCHOOL STAFF BE REVISED?

9.1 In recent years there has been a considerable amount of guidance published by the Government on relevant websites and through the usual Government channels. The problem is not so much a lack of guidance but one of poor practice. In 2004 a series of helpful documents were published including:

- Definitions and Thresholds for Managing Allegations Against School Staff;
- Managing the Aftermath of Unfounded and Unsubstantiated Allegations;
- Staff Subject to Allegations; and
- Guidance For Education Staff Facing Allegations of Abuse.

9.2 These policies need updating as they do not take into account recent changes in the role of the Criminal Records Bureau, the General Teaching Council, the Independent Safeguarding Authority, and other listing bodies. In our experience the documents referred to above are not well known and their use has been patchy.

10. THE CHILD PROTECTION DIMENSION

10.1 There is a need to recognise that tension exists between the need to promote the welfare of children and the need to safeguard the right of the accused to a fair process. In our experience this tension often skews the process right from the outset.

10.2 When a person has been accused of child abuse a strategy meeting is held in order that the professionals present can exchange information and develop a strategy for ensuring that the welfare of any child considered at risk is safeguarded, and for managing any investigation that is considered necessary.

10.3 These meetings are an essential component of an effective child protection policy but in recent years their role has evolved (without Government sanction) into determining whether or not the accused person is guilty or innocent of what is alleged, even though that person may not have been told what it is they are alleged to have done—let alone produce any evidence in their own defence.

10.4 Once the die is cast it is very difficult for employers to take a contrary point of view. Employers need to recognise that the child protection system has over many years persistently failed to develop procedures that correctly sift truthful allegations from false ones. Untested information should never be accepted uncritically.

11. THE ROLE OF INVESTIGATING OFFICERS

11.1 Not all the blame can be attached to child protection workers. They are damned if they do and damned if they don't. Employers also bear some of the responsibility for their failure to identify false allegations and for miscarriages of justice in disciplinary cases.

11.2 In our experience (of several authorities throughout the UK) we have been struck by the lack of attention given to the need to train people to conduct meaningful investigations into alleged misconduct. Most investigative officers are selected according to their status rather than their experience, and not because they have any real understanding of human rights, employment law or the investigative process.

11.3 Investigative officers need to understand that they should be impartial and that they have a responsibility to examine the facts which, potentially, support the complaint or allegation made, and a responsibility to examine the facts which, potentially, point to the person's innocence. It is only when they have considered both elements and evidenced that they have done so, that they can truthfully claim to have carried out a fair investigation.

11.4 In our view considerably more time should be given to providing investigating officers with relevant training.

12. WHEN IS SUSPENSION OF THE STAFF MEMBER CONCERNED APPROPRIATE?

12.1 In our view most schools/employers, including those in the private or voluntary sector, have a good understanding as to when suspension is appropriate. However, we think there is a need to review suspension policies in light of a recent Court of Appeal decision that "suspension is not a neutral act and changes the status quo from work to no work and inevitably casts a shadow over the employee's competence" (*Mezey v South West London and St George's Mental Health NHS Trust* [2007], EWCA Civ 106).

12.2 Teachers fully understand that when an allegation has been made against them it must be fully and competently investigated. What they find difficult to understand is the lack of support they receive from their employers. Many of those who are accused of sexual abuse also complain that their trade union is, at best, ambivalent about providing them with advice and representation.

12.3 Often the accused teacher is left in the dark and is not sure who is driving the investigation—the employer, social services or the police. They are invariably told that whilst suspended "they must not contact their colleagues at work"; a phrase which has a double meaning and has been frowned upon by employment tribunals who rightly point out that the accused has every right to contact anyone they believe has evidence which might help establish their innocence. Employers are of course entitled to control the contact during work time but have no jurisdiction to prevent contact outside of work. To do so would, arguably, be a breach of a person's human and legal right to association, family life and a fair hearing.

12.4 All too often employers give very limited explanations for suspensions. Typically, staff are told they are being suspended as a result of "a child protection concern", which, if they are innocent, they can only imagine. This can create untold anxiety. Indeed it has on occasion led to suicide or parasuicide. (In 2003 a North Wales classroom assistant committed suicide within hours of being told he was being suspended, no reason being given, believing wrongly that he was being accused of child abuse.)

12.5 It is very important that when staff are suspended they are given support and kept informed of progress. Equally it must be recognised that staff, especially when distressed, need adequate time to prepare their defence, particularly in complex cases. It is frankly not good enough when an employer takes several months to prepare their case only to allow the accused two weeks to prepare theirs.

12.6 Representation is also very important. Under the present ACAS Code of Practice there is a statutory entitlement for the accused to be represented by a colleague or trade union official. Not all members of staff belong to a trade union so their only option is to ask a colleague to represent them. This may not be appropriate, particularly if the employer has placed restrictions on the contact that can take place between the accused and other staff. Furthermore, being falsely accused of child abuse is a shaming experience and most teachers would not wish their colleagues to know the details of what they are supposed to have done. We would very much hope that all employers will ensure that no person is left without representation.

13. WHEN IS THE ARREST OF THE STAFF MEMBER APPROPRIATE?

13.1 In our experience the practice of whether or not to arrest someone accused of child abuse, as opposed to inviting them to attend a police station for questioning, varies across police force areas. We think this matter could usefully be referred to the Association of Chief Police Officers for further discussion.

14. RETENTION OF RECORDS OF ALLEGATIONS FOUND TO BE FALSE

14.1 Notwithstanding the problems of defining "false", the issue of record retention is problematic. Some individuals may well prefer their records to be kept because it may subsequently help them evidence their exoneration, and also help evidence the fact that a particular individual should be regarded as high risk in terms of making false allegations.

14.2 It has been suggested both by the Lord Chancellor and CSF Departmental Officials that teachers should not have any comments placed on their file if they are falsely accused. However, given the profession's reluctance to accept the notion that false allegations are made this is unlikely to have any impact.

14.3 Others have suggested that the policy should extend to all cases where a person has been found "not guilty" of disciplinary charges. Whilst there are good "justice" reasons why this should happen—its impact is likely to be limited in the case of alleged abuse since the fact that an allegation has been made is routinely recorded on an enhanced certificate of disclosure issued by the Criminal Records Bureau which everyone working with children is required to have. Neither will it get over the routine question on many job application forms of "have you ever been subject to a complaint concerning a child or young person?"

14.4 In our view this problem can only be resolved by a complete reappraisal of the law as it affects disclosures made by the criminal records bureau and local police forces to prospective employers.

May 2009

Supplementary memorandum submitted by FACT (Falsely Accused Carers and Teachers)

1. ISSUES

1.1 During the second session held on 17 June questions were posed about whether or not it was possible in some way to combine the various investigations in order to speed up the process and make it more efficient, and whether or not the accused could be legally represented at disciplinary hearings.

2. COMBINING THE INVESTIGATIONS

2.1 It is important to understand that in most cases of alleged abuse (which can include even minor complaints of emotional, physical, or sexual abuse (including any unwanted touching) there will be three strands of investigation involving the police, social services (child protection) and the employer.

2.2 The police have a duty of care to wider society to uphold the law, social services have duty of care to protect children, and the employer has a duty of care to its employees.

2.3 Whilst there may be some sharing of information and mutual cooperation, each of these agencies is required to operate within a different statutory framework, and is accountable to different bodies.

2.4 In practice what happens is that where it is suspected that a crime may have taken place the police investigation rightly takes priority. These investigations can take several weeks, indeed months to complete. At the same time the local authority social services department (or equivalent) has a statutory duty to make, or cause inquiries to be made, in any case where it is suspected a child (or children) may be at risk of significant harm (Children Act 1989, section 47).

2.5 Once these investigations are complete the employer will want to carry out their own investigation and satisfy themselves as to whether or not the allegation made amounts to misconduct, whether the employee has breached any of the employer's policy and procedures, or behaved in such a way that has affected essential trust and confidence between employee and employer.

2.6 In many (but not all) cases information gathered through a child protection investigation is untested, and developed without the accused being given an opportunity to defend their position. Difficulties arise when employers accept such information uncritically. There is for many accused staff, a tension between the child protection approach and the need for a just investigative procedure. Employers have a duty to assess each case objectively and according to the evidence.

2.7 In our view there is very little scope for combining investigations. With the exception of the police, there however remains a need to improve the quality of investigative practice and to ensure that justice considerations are given a much greater priority throughout the investigative process, including in child protection meetings.

3. LEGAL REPRESENTATION AND THE RIGHT TO BE ACCOMPANIED

3.1 Most employers and most local authorities have their own distinct procedures for dealing with potential disciplinary issues. These procedures are generally informed by an ACAS statutory code of practice.

3.2 Workers have a statutory right to be accompanied at a disciplinary hearing (but not at an investigative hearing) by a companion where the disciplinary meeting could result in:

- (a) a formal warning being issued; or
- (b) the taking of some other disciplinary action; or
- (c) the confirmation of a warning or some other disciplinary action (appeal hearings).

3.3 The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.

3.4 It is important to note that there is no statutory right to legal representation.

3.5 In our experience it is exceptionally rare for any employer, including local authorities, to permit a solicitor to attend such meetings even in cases where the accused is not a member of a trade union and/or has not been able to obtain representation from among the workforce.

3.6 In general terms we support the view that disciplinary proceedings should not become “legalised” but never the less feel that the ACAS Code of Practice could be strengthened by giving the accused the right to be represented by any person other than a legal representative. This would avoid situations where some individuals are left without any representation.

June 2009

Memorandum submitted by the National Union of Teachers (NUT)

- There has not been a great increase in the number of allegations against school staff which result in police action, and a relatively small number of such allegations result in a conviction.
- The harm caused by a false allegation can be immense, both to a teacher’s career and general well-being. The impact must therefore be limited as much as possible so that those who are the subject of a false allegation do not suffer disproportionate harm.
- Further steps must be taken to ensure that the recording and retention of unproven and false allegations do not harm a teacher’s future career.

THE SCALE AND NATURE OF ALLEGATIONS OF IMPROPER CONDUCT MADE AGAINST SCHOOL STAFF

1. Over recent years, the number of NUT members subject to an allegation of criminal misconduct has remained relatively steady at approximately 200 cases per annum. Of these about 5% result in a conviction or finding of misconduct.

2. Statistics are not held by the NUT on allegations of improper conduct made against NUT members which do not lead to police involvement.

3. Very few allegations of sexual assault are made against NUT members. In the main, allegations of improper conduct involve an alleged assault relating to pupil discipline.

WHETHER STAFF SUBJECT TO ALLEGATIONS SHOULD REMAIN ANONYMOUS WHILE THE CASE IS INVESTIGATED

4. The NUT subscribes to the view that every effort should be made to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered.

5. It is already the case that identity will remain undisclosed until charge. The Union supports a change to maintain anonymity until conviction. The harm caused to teachers by a false allegation is so great that the impact must be limited to those who have been found guilty of misconduct.

WHETHER THE GUIDANCE AVAILABLE TO HEAD TEACHERS, SCHOOL GOVERNORS, POLICE AND OTHERS ON HOW TO HANDLE CLAIMS OF IMPROPER CONDUCT BY SCHOOL STAFF SHOULD BE REVISED, WITH PARTICULAR REFERENCE TO:

The procedures followed by disciplinary panels

6. In cases where the police have investigated an allegation, there is a risk that a subsequent disciplinary panel may be inappropriately influenced by evidence arising from the police inquiry. The remit of a disciplinary panel has different criteria and evidence requirements from a police inquiry, and it is essential that evidence from one does not contaminate the other.

7. Disciplinary procedures are a particular problem for agency supply teachers. Whilst schools will share allegations that have been made against supply teachers with the agency, neither the agency nor the school will institute disciplinary procedures, so that such teachers often have no chance to properly clear their name even if the allegation was entirely unfounded.

When suspension of the staff member concerned is appropriate

8. The guidance on suspension is clear but employers frequently fail to adhere to it. The criteria for considering suspension are overlooked and too often teachers are suspended automatically, in contravention of the guidance.

9. The NEOST/Union guidance entitled *Staff Facing an Allegation of Abuse—Guidelines on Practice and Procedure*, published in 2002, provides comprehensive advice on suspension procedures and, in our view, should be incorporated into Government guidance.

10. Because of the overly-cautious approach of employers, the inappropriate use of suspension when allegations are trivial and there is no cause to suspect a child is at risk of significant harm is a recurring theme in NUT casework. The harm caused to teachers suspended inappropriately should not be underestimated.

11. Very rarely are teachers called to suspension interviews, that is, interviews with the head teacher, with their representative present, to consider whether suspension is appropriate. Whilst the NUT is aware of some head teachers occasionally offering teachers the option of “working at home” as an alternative to suspension, more often than not, the teacher is simply informed that they are suspended with immediate effect.

12. The NUT is aware of head teachers being put under considerable pressure from social services to suspend. One Local Authority has even threatened to remove the governing body should it not comply with the Authority’s wishes in this regard.

13. A further reason for head teachers suspending teachers almost automatically is that there is a misconception by some that if they do not suspend at the outset, they may be restricted later on if they decide to dismiss the teacher on the grounds of misconduct.

14. In terms of support for teachers whilst suspension is continuing, it is the NUT’s experience that almost none is offered. Welfare counselling and support from the Local Authority’s medical officer is generally not even discussed.

15. Some letters of suspension will state that the teacher is forbidden from contacting colleagues at the school whilst the suspension/investigation is continuing. This practice is not only unfair and contributes to the teacher’s feelings of isolation, but also leads to a number of perverse situations. An example is that of a teacher who had been forbidden from contacting work colleagues, despite the fact that the teacher in question was married to a fellow teacher at the school. Best practice on this issue has not been widely developed.

16. The fact that contact with work colleagues is often forbidden indicates that there is a fundamental lack of understanding by head teachers and Local Authority staff as to the devastating and isolating effects of suspension upon the teacher and his/her family.

17. Whilst suspension letters do sometimes mention a named contact at the Local Authority and at the school, the teacher usually receives no contact from either. The school bulletin, adverts for internal posts, even the teacher’s pay slips are often not being sent to the teacher whilst s/he is suspended. Unions are largely fulfilling the role of the employer in supporting the teacher whilst suspension is continuing.

18. Often it is the case that teachers who have been made the subject of an unfounded allegation, and who were suspended throughout the investigation for a number of months, leave the profession. Teachers often tell us that their decision to leave is taken as a result of the isolation and lack of support experienced during their suspension, as well as the difficulty of returning to their career as a result of recording procedures.

19. When suspensions are lifted, as a result of the allegation being found to be false/unfounded, welfare counselling is rarely offered to the teacher, phased returns are unusual and return to work interviews are rarely conducted.

20. In order to ensure that suspension issues are properly handled and to encourage retention of key members of staff who have had unfounded allegations made against them, the NUT believes the following should be enforced:

- suspension interviews should be arranged with the teacher represented;
- the teacher/representative of the teacher must be able to make representations;
- the teacher must be given a named contact at the Local Authority and school who should take active steps to contact the teacher, update him/her on any key developments etc. The teacher should be encouraged to have social contact with colleagues whilst suspension is continuing, providing that doing so does not interfere with any police investigation; and
- welfare counselling/help from the Local Authority’s medical officer must be offered to the teacher;

Phased returns should be considered in order to help the teacher adjust to school life after a suspension is lifted.

When arrest of the staff member concerned is appropriate

21. Although the numbers affected are small, there is evidence from solicitors that police routinely arrest teachers inappropriately, with grave consequences for the individuals concerned. Again, this appears to result from the misinterpretation of, or failure to follow, the relevant guidance.

The retention of records of allegations found to be false

22. The NUT is strongly of the view that records of trivial and unfounded allegations should not be kept on a teacher’s personnel file and should not be passed on to future employers.

23. The DCSF guidelines currently state that a record of any allegations relating to the safety and welfare of children made against a staff member should be kept in their personnel file. The NUT believes that the guidance should be amended to ensure that only allegations with substance are recorded and retained on file, and that false and malicious allegations should not be disclosed in references.

24. Where there has been a criminal investigation, there is a real danger of misleading records being disclosed to prospective employers. The NUT deals with a significant amount of casework on this. We are of the view that guidance such as the Home Office Circular 5/2005 should be more robustly applied. This is in order that information passed to the CRB by local police forces for disclosure purposes, as required under Section 115(7) of the Police Act 1997, cannot be misconstrued.

25. Teachers and other staff working with children are particularly vulnerable to false allegations. In some cases the process of investigation will find that the allegation is manifestly false and the teacher may be able to resume their teaching career without excessive difficulty. However, in others, there may be a less clear resolution so that the teacher never feels entirely “cleared”. Such cases commonly result in the ending of a teacher’s career. In these situations, the way in which information is recorded is of utmost importance as the inclusion of any recorded information is likely to raise a suggestion that there was substance in the allegation.

26. The NUT accepts that non-conviction and other material may in some circumstances be made available to those deciding on suitability for teaching posts but believes that such material must be relevant, credible, clear and capable of substantiation. The NUT also believes that a decision as to disclosure should be taken by a chief police officer on the individual circumstances of the case. The way in which material is presented must be meaningful and done in such a way as to minimise misunderstanding.

May 2009

Memorandum submitted by Paul Kaufman (Solicitor)

- This submission is concerned with the arrest of staff members under investigation; whether arresting staff members is appropriate; the implications of arrest.
- The submission is made by a solicitor with extensive experience of representing teachers under investigation by police.
- In summary it is submitted that staff are routinely arrested when it is inappropriate and that this has potentially serious adverse consequences for staff in relation to their morale, their civil liberties, any disciplinary inquiry and their future career.
- One case summary is included to illustrate the submission.

1. CREDENTIALS

I am a solicitor in private practice. I have specialised in criminal law for over 25 years. I am on a panel of solicitors instructed by the NUT to assist with teachers who are being investigated by the police in relation to alleged criminal offences. I have been on the panel for over 10 years. Cases are referred by the London Regional Offices and the Eastern Region of the Union. I deal with approximately 30 cases a year. I generally try to attend the police station in person. I have also personally represented teachers as an advocate in the Magistrates Court and Crown Court.

2. LEGAL FRAMEWORK

There is no longer a distinction between arrestable and non arrestable offences. Teachers are therefore liable to be arrested in relation to all allegations of crime that are made, no matter how trivial. The criteria which the police should apply when determining whether arrest is appropriate are set out in Code G to the Police and Criminal Evidence Act 1984.

3. CRITERIA FOR ARREST. CODE G

Under Paragraph 2.1 in order for an arrest to be lawful the officer “must have reasonable grounds to believe that the person’s arrest is necessary.” The criteria for what may constitute necessity are set out in Paragraph 2.9(a)–(f). It is submitted that, other than in the most exceptional cases, none of the criteria apply to a teacher under investigation. Each of the criteria will be considered below in the context of a typical allegation and investigation. The criteria have, where appropriate, been paraphrased.

(a) and (b) *To enable the name or address of the suspect to be ascertained.*

These details will invariably be easy to ascertain where a teacher is under investigation.

(c) *To prevent the suspect:*

- (i) causing physical injury to himself or any other person;
- (ii) suffering physical injury;
- (iii) causing loss or damage to property;
- (iv) committing an offence against public decency; and

(v) causing an unlawful obstruction of the highway.

It is highly unlikely that any of the above will be relevant in the case of a teacher. The police will only usually become involved some days or weeks after the teacher is made aware of the allegation. Any risk of physical injury to other pupils is usually precluded by the suspension of the teacher

(d) *To protect a child or other vulnerable person*

As above, the suspension of a teacher will answer any concern under this head.

(e) *To allow the prompt and effective investigation of the offence or of the conduct of the (suspect)*

In practice the great majority of interviews of teachers under investigation by the police do not take place until at least several days, or more usually several weeks, after an initial complaint has been made. The police will normally require some time to carry out enquiries. This will often involve conducting an interview of any child complainant or witness on CCTV using the Achieving Best Evidence (ABE) protocol. It is only after the initial investigation has been conducted that arrangements will be made to interview the suspect. Consequently this head does not apply to the great majority of cases. On the contrary, the common complaint of teachers is that investigations take too long.

4. WHEN AND WHY ARE TEACHERS ARRESTED?

In my experience the majority of teachers under investigation are not arrested by the police. However, a significant number of teachers are arrested. Based on my experience there are broadly speaking three sets of circumstances:

(a) *Teachers who are not arrested*

The police need to record an interview of the teacher under caution. However, they are prepared to treat the teacher as a "volunteer." Arrangements are made for the teacher to attend for interview by appointment. The interview can take place at a police station or at any other facility. As the teacher is not arrested there is no need for a custody officer, booking in procedure, etc. This approach is sometimes referred to as "Caution plus three." That is the suspect is cautioned and advised of their three rights, ie that they are not under arrest and are free to leave the police station; they may obtain free and independent legal advice; they have the right to speak to a solicitor on the telephone.

(b) *Teachers who the police initially intend arresting where the police are persuaded this is not necessary*

There are a significant number of cases where the police indicate in advance that it is their intention to arrest the teacher when the teacher attends the police station by appointment. In a number of these cases it has been possible to persuade the police that this is not necessary. The police have then proceeded by treating the teacher as a volunteer as per (a) above. This never appears to have created a problem for the police. On the contrary the approach in (a) is more straightforward procedurally, involves less manpower (no custody officer is required), is less confrontational and is quicker. It is reasonable to assume that teachers who are not represented, or where their representative is less proactive, are being routinely arrested simply due to the decision to arrest not being effectively challenged.

(c) *Teachers who are arrested*

- (i) There are very occasionally extremely serious allegations made against teachers where it is imperative for a prompt and effective investigation that the police arrest the suspect. Cases of this type are exceptional. They generally comprise cases where there is a genuine risk of a teacher disposing of evidence or otherwise interfering with the course of the investigation for example by talking to witnesses.
- (ii) Teachers who are arrested simply because the police take the view that the allegation is serious and/or that the evidence of an offence being committed is credible. These are not appropriate criteria under Code G.

5. ARGUMENTS FOR AND AGAINST ARREST

The police do not always give a cogent reason to justify the arrest of a teacher. The reasons which are sometimes given, and the fallacy of those reasons, are as follows.

(a) *If the teacher is not under arrest then there is nothing to stop them from walking out of the police station at any time. This would include terminating an interview at will.*

In practice this simply does not happen. Teachers will happily attend by appointment. They wish to give their account. As professional persons they appreciate that it would be counterproductive to walk out during the course of an investigation.

(b) *It is important from the perspective of all parties that the police are seen to be carrying out a thorough investigation as they would in any criminal investigation.*

This is not a valid ground under PACE. In practice the police can and do conduct thorough investigations where teachers are not arrested.

(c) *The allegation is serious.*

This is not a valid ground under PACE.

(d) *The allegation is credible.*

This is not a valid ground under PACE.

6. THE EFFECT OF ARREST ON MORALE

The physical process of arrest is demeaning. It follows automatically from an arrest that fingerprints and a photograph will be taken. A scraping is taken from the inside of the suspect's mouth for a DNA sample. Arrest by definition involves depriving a suspect of their liberty. There are occasions when they may be placed in a cell. In short, a teacher is treated like any other criminal and will often feel that they are being regarded as an ordinary criminal.

It is invariably the case that teachers subject to suspension and a police investigation are upset and anxious. The process of arrest exacerbates their upset and anxiety and adds a strong sense of unfairness.

7. CIVIL LIBERTY ISSUES

This issue is clearly identified in Code G Paragraph 1.

Paragraph 1.2 "The right to liberty is a key principle of the Human Rights Act 1998. The exercise of the power of arrest represents an obvious and significant interference with that right."

Paragraph 1.3 "The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive, means. Arrest must never be used simply because it can be used . . ."

In my experience teachers who have been arrested feel a strong sense of grievance that their civil liberties have been infringed. They are acutely aware of the stigma attached to having been arrested, whether or not such stigma is justified. In common with many others, they resent the fact that the police retain their fingerprints, photograph and DNA sample even though they have not been charged with a criminal offence.

8. THE EFFECT OF ARREST ON DISCIPLINARY PROCEEDINGS

It is frequently the perception of teachers that the fact of their arrest is likely to place them at a disadvantage in any disciplinary proceedings. This is a reasonable perception. As explained above, the decision to arrest frequently reflects a view on the part of the police involved in the investigation that the evidence of an offence having been committed is credible. It is reasonable to assume that a disciplinary tribunal will, consciously or otherwise, attach some importance to the police view of the evidence. There is a risk that this will colour their own assessment of the evidence even before they have commenced to consider it independently.

9. THE EFFECT OF ARREST ON CAREER PROSPECTS

It is frequently the perception of teachers that the fact of their arrest is likely to place them at a disadvantage in relation to their employment. The reasoning is similar to 8. above. There is a sense of stigma attached to having been arrested. There is a justified fear that the fact will be disclosed on an enhanced CRB check. There is a risk that a prospective employer will, consciously or otherwise, attach importance to the police perception that the credibility of the allegation merited the arrest of the teacher.

10. CASE STUDY. METROPOLITAN POLICE STATION 2009

Teacher x is accused of assaulting a child by pinning him against the wall in a corridor. The incident is captured on the school CCTV. The incident is witnessed at least in part by other staff and by children in the corridor.

Teacher x is suspended following the allegation. The case is referred by the Union. Some weeks following suspension arrangements are made for Teacher x to attend the police station by appointment for interview. The investigating officer states that it is her intention to arrest teacher x. She is not prepared to change her decision in the light of verbal representations that this is not necessary. A letter is then sent to the Chief

Superintendent at her police station in the following terms:

By Fax:

VERY URGENT

Dear Sir

TEACHER X (DOB 00.00.00): INVESTIGATION BY CHILD ABUSE AND INVESTIGATION TEAM.

OFFICER IN THE CASE DETECTIVE SERGEANT XXXXXXXX.

APPOINTMENT FOR INTERVIEW—MONDAY 00.00.09 AT 09.00.

This firm acts for the above-named. Our client is a teacher. The case was referred to this firm by his Union, the NUT.

Arrangements have been made for Mr X to attend your police station by appointment on Monday at 9.00am. It is the intention of the officer in the case to interview our client regarding an allegation of assault against a pupil at his school, XXXXXXXX Secondary School.

We write due to our concern at the indication given by the officer in the case that it is her intention to arrest our client upon his attendance at the police station. During the course of a conversation with the solicitor responsible for conduct of the case she made it clear that she is not prepared to change her view on this. However, she has failed to provide any satisfactory reason for this decision. The officer did state that, in her view, it was in the defendant's interests that he is arrested. We do not agree. We take the view that the arrest of a professional person in the circumstances of this case is inappropriate, totally unnecessary and demeaning.

We respectfully remind you of the relevant codes of practice of which you are no doubt fully aware. The exercise of the power of arrest represents an obvious and significant interference with the right to liberty (Paragraph G:1.2). The power of arrest is only exercisable if the constable has reasonable grounds for believing that it is necessary to arrest the person under paragraph G2.9. We have been unable to identify any of the criteria under G2.9 which could possibly amount to a good reason for arresting our client.

Mr X is a man of positive good character. He has been a teacher for XX years. He has taught at the school in question for X years. He has an unblemished teaching record.

We understand that the youth, who is the complainant in this matter, has a history of violence. According to our client, he was summonsed to assist with an incident at the school where the complainant was fighting. Following our client's intervention he received serious threats of violence from the youth. The youth also threatened to summons other persons to exact violence on our client.

It is our client's firm intention to attend punctually for interview. He has been anxiously awaiting his opportunity to set-out his account in interview. There is no suggestion at all so far as we are aware that our client had attempted to contact any witness or potential witness since the date of the incident on 00.00.08.

We will be grateful if you could let us know on what specific ground under the PACE code it is intended to arrest our client. In the event that no satisfactory ground is provided we will advise our client regarding the action he may take in the event that he is arrested.

The solicitor in the case is Paul Kaufman. We await hearing from you.

Yours faithfully

Wiseman Lee LLP

No response is received to the letter prior to the appointment to attend the police station. The teacher attends punctually at the police station at the appointed time with his legal representative. The officer acknowledges and is aware of the contents of the letter to the Chief Superintendent. She indicates that it is her intention to proceed with an arrest in any event. Further verbal representations are made on behalf of the teacher that this is not appropriate. It is emphasised in the presence of the teacher that he has attended the police station to give his account and has no intention of leaving until he has done so. The arrest proceeds in any event.

The verbal representations are repeated to the custody officer. She is not prepared to "de-arrest" the teacher. She is not prepared to take or attach a copy of the letter to the custody record as the custody record is now fully computerised and there is apparently no provision for doing so. She does agree to call the duty Inspector to review the decision to arrest.

Further representations are made to the duty Inspector. He reviews the teacher's detention but is not prepared to change the teacher's status as a person under arrest. The police proceed to take the teachers fingerprints, DNA sample and photograph. His is then interviewed. He gives a full account, as he had always intended. He is then bailed by the police.

At no point during this investigation is a cogent reason given under PACE for arresting the teacher. It will be noted that the police approach in this case was not that of just one aberrant officer. The approach was endorsed by both investigating officers, both of whom are experienced, by the custody officer, by the Inspector and, apparently, by the Chief Superintendent.

This case is by no means an isolated example.

11. CONCLUSION

Teachers should, in relation to police investigations, be treated as a special case for the following reasons:

- (a) Teachers are unusually vulnerable, perhaps more than any profession, to the making of false allegations of criminal conduct. This is reflected in the unusually large number of such allegations referred to the police and the fact that only a tiny proportion of these allegations result in a criminal conviction or caution.
- (b) The arrest of teachers is particularly damaging to their morale and to their career.
- (c) The arrest of teachers is in the great majority of cases unnecessary due to the way in which such investigations are usually carried out and the willingness of teachers to cooperate.

It is therefore respectfully submitted that clear guidance should be given to Child Abuse and Investigation Teams to ensure that teachers are only arrested in those exceptional cases where this is necessary.

April 2009

Memorandum submitted by the NASUWT

SUMMARY

NASUWT data collected since 1991 demonstrates that the number of allegations has increased and that the majority of allegations made against teachers are false or malicious. Case studies are provided alongside this evidence to illustrate a number of the points of concern raised in this evidence.

There is no place for those who abuse children and young people in children's services. All allegations made by children and young people must therefore be taken seriously and properly investigated. Those accused, however, are entitled to be treated fairly. Investigations should not be conducted on the basis that a person subject to the allegation is guilty until they can prove themselves innocent.

Since the NASUWT began campaigning in 1991 on the issue of allegations against staff, considerable progress has been made on improving the relevant procedures but more needs to be done.

The abuse of technology as a vehicle for making allegations against staff is a relatively new and increasing problem and despite extensive guidance from the Department for Children, Schools and Families (DCSF) is still not taken seriously by employers and managers.

A legal provision should be introduced to provide anonymity for staff up to the point of a court decision.

The current Allegations Guidance should be strengthened by incorporating specific provisions to:

- address the position of supply teachers and student teachers on teaching practice against whom allegations are made;
- provide more detailed advice for governors serving on disciplinary panels;
- discourage the routine referral of allegations by schools to external agencies, irrespective of their nature and severity;
- deter automatic suspension of staff without consideration of alternative strategies and secure a regular review of any suspension made;
- make clear the responsibilities of schools and local authorities to ensure confidentiality of investigations; and
- advise on the weight which should be given by employers to 'soft-information' on CRB disclosures.

Training should be introduced for police officers:

- in the application of the arrest provisions set down in Section 24 of the Police and Criminal Evidence Act 1984 (PACE) to prevent teachers being arrested when they voluntarily and willingly co-operate with an investigation into an allegation made against them; and
- with regard to the provisions of the Education and Inspections Act 2006, which enable staff to use reasonable force in specified circumstances and on the right of staff to use reasonable force in self-defence or to prevent another person or property from being damaged.

The inconsistencies in the recording and disclosures of non-conviction and internal disciplinary information, so called "soft information", is a serious problem which must urgently be addressed to prevent teachers and other staff who have been falsely accused having their careers permanently blighted.

1. The NASUWT believes this is a critical Inquiry and welcomes the opportunity to provide evidence.
2. This response draws on the Union's extensive experience of handling casework involving allegations against teacher and headteacher members and the Union's work on collecting data and working with Government to address concerns relating to allegations against staff. The NASUWT has maintained a national database of allegations against members since 1991.
3. The chronology in Appendix A shows the work undertaken by the Union over the past 18 years and the significant progress made. However, there is still much more that needs to be done to protect staff.
4. The NASUWT wishes to emphasise at the outset that there is no place in the profession for those who abuse children. All allegations made by children and young people must be properly investigated. However, investigations should be conducted in a way that is fair and transparent and protects the rights of all those involved, particularly in light of the fact that the overwhelming majority of allegations against teachers turn out to be false or malicious.

THE SCALE AND NATURE OF ALLEGATIONS OF IMPROPER CONDUCT MADE AGAINST SCHOOL STAFF

5. Appendix B contains the NASUWT's statistics on allegations of physical/sexual abuse made against NASUWT members since 1991. These figures show that the number of allegations has risen significantly. However, it must also be noted that this table only includes cases where the allegation was referred to the police and it was necessary for the Union to instruct solicitors to represent the member at a police interview and therefore the figures only represent the "tip of the iceberg". There are many more cases where teachers are taken through an internal disciplinary process without police involvement. These teachers may or may not be dismissed, but many, regardless of the outcome of these procedures, leave the profession as a result of the stress of the process.
6. NASUWT casework reveals continuing and increasing problems with pupils making allegations against teachers. There is an increasingly prevalent attitude of pupils challenging teachers with comments asserting their legal rights and threats that they will make an allegation against the teacher if s/he seeks to reprimand them for misbehaviour.
7. A relatively recent additional dimension to allegations against staff is the use of websites, such as YouTube and Bebo, by pupils to make false and malicious allegations against teachers anonymously. Publicly available derogatory remarks about teachers' practice affects their self-esteem and health and leaves them vulnerable to damage to their careers when current and prospective employers trawl the sites. In 2008, the NASUWT presented 100 examples to the Minister of State for Schools and Learners, Jim Knight MP, collected over a five-day period.
8. As a result of the growing body of evidence of technology abuse, the Union launched its Cyberbullying Campaign in 2007, calling for:
 - examination of legislation and/or regulatory provisions that could be introduced to make more accessible avenues of redress for victims against the website hosts;
 - a review of the child protection investigation procedures that require all allegations against teachers, including those that are anonymous, to be investigated and for guidance to be issued to schools on handling allegations that specifically appear on websites;
 - legislative change for anonymity for teachers accused of abuse to be given serious consideration in light of the frequency of false allegations on these websites; and
 - measures to encourage schools to treat these incidents very seriously, including making specific reference in school behaviour policies to the use of the most serious sanctions for misuse of technology, either in school or off site, including a clear statement of zero tolerance.
9. Despite extensive guidelines from the DCSF to schools, it is the Union's experience that employers and managers are often reluctant to become involved when websites are misused by pupils. Given the potential damage that can be caused to teachers' health and careers, the NASUWT believes the Allegations Guidance should be expanded to cover allegations made through forums such as the Internet, e-mails and mobile phones. This needs to address what an employer should do when an allegation is made online anonymously.
10. Also of concern is a developing trend where, when allegations of common assault are made against teachers by pupils, this then results in external investigations being instigated into the welfare of the teachers' own children. The NASUWT believes that the instigation of a Section 47 investigation into teachers' domestic and family circumstances arising from an allegation made against them by pupils is inappropriate, unacceptable and a disproportionate response. One-off allegations of physical assault are being treated with the same severity as serious allegations of sexual abuse. Two examples are given in Appendix C (see Case Studies (i) and (ii)).

WHETHER STAFF SUBJECT TO ALLEGATIONS SHOULD REMAIN ANONYMOUS WHILE THE CASE IS INVESTIGATED

11. The NASUWT initiated the campaign for anonymity in 2003 because of the injustice of teachers being publicly named when accusations are made against them, whilst the pupils who make the allegations remain anonymous. The Union has been seeking changes to the law to give anonymity up to the point of a court decision. Victims often endure intrusive and lengthy investigations, which trigger trial by media. Their

family life, health and professional confidence deteriorate. In extreme cases, teachers have committed suicide. The NASUWT launched a postcard campaign in 2004 to gather support for this legislative change. Over 60,000 responses were received and delivered to Downing Street. Claire Curtis-Thomas MP (Labour) presented 30,000 of the responses to the House of Commons. The Conservative Party also supported the Union's campaign.

12. The Government responded positively and, whilst not being prepared to grant anonymity, it did revise the guidance issued by the Association of Chief Police Officers (ACPO), advising police forces not to release the identity of individuals to the media prior to formal charges being brought. The ACPO position is referred to in the Allegations Guidance, but the NASUWT believes that the guidance needs to make it clearer to schools and local authorities that they have responsibilities to try to ensure that confidentiality is maintained at all stages of the process. The Government also brought in a fast-track investigation procedure of allegations as it was clear that the longer an investigation took, the more likely there was to be media coverage. This guidance was recently reviewed by the DCSF to evaluate its effectiveness.

WHETHER THE GUIDANCE AVAILABLE TO HEADTEACHERS, SCHOOL GOVERNORS, POLICE AND OTHERS ON HOW TO HANDLE CLAIMS OF IMPROPER CONDUCT BY SCHOOL STAFF SHOULD BE REVISED, WITH PARTICULAR REFERENCE TO:

(i) *The procedures to be followed by disciplinary panels*

13. The current Allegations Guidance does not include advice for disciplinary panels on the procedure they should be following when hearing allegations of a child protection nature. In the Union's extensive casework experience, many employers approach investigations and disciplinary hearings from the point of view that the teacher is guilty of the alleged misconduct unless s/he can prove otherwise (see Case Study (iii) in Appendix C for an example of this).

14. The NASUWT continues to have concerns about the role of governors on disciplinary panels. As volunteers, many governors have no training, experience or expertise in disciplinary procedures. They often also receive poor advice from Human Resources/Personnel providers.

15. The Allegations Guidance should include a section advising schools, and particularly disciplinary panels, of the approach to be taken when considering child protection allegations. This should draw to their attention the crucial principles of natural justice and "innocent until proven guilty". The information could be similar in nature to helpful guidance that is available to members of General Teaching Council Disciplinary Committees, the General Medical Council panel chairpersons and decision makers in circumstances where barristers have breached the Bar Code of Conduct (see Appendix D).

16. The NASUWT believes that headteachers, as a result of the Allegations Guidance, are generally now less inclined and lack the confidence to deal even with low-level allegations internally, instead erring on the side of caution and referring all cases to the local authority. Local authorities are much more inclined to treat the matter as a child protection issue involving "significant harm" irrespective of the nature of the allegation. As a result, cases that may involve, for example, a minor restraint incident where a teacher has acted in accordance with the reasonable force guidance, are treated in exactly the same way as serious allegations of sexual abuse.

17. The Select Committee may wish to consider the independent investigation service introduced in Wales under the Staffing of Maintained Schools (Wales) Regulations 2006. This has brought more objectivity and impartiality into the investigatory stage of child protection allegations.

18. The NASUWT is concerned about the specific difficulties faced by supply teachers. Generally, when an allegation is made against a supply teacher, the teacher is just sent away by the school and asked not to return. This is not a "suspension" and they are not paid. The school has no responsibility towards them as they are not on the staff of the school. They are then often left in limbo, unable to work and without pay, sometimes permanently removed from the agency's books. Often neither the supply agency nor the school actively seek to investigate the allegation. The teacher is therefore not able to clear his/her name. Case Study (iv) in Appendix C is an example of such a situation. The Allegations Guidance should make it clear what responsibilities the agency, school and local authority have when an allegation is made against a supply teacher and must stress that the necessary investigation needs to be completed within a reasonable timescale.

19. The NASUWT also has concerns about the position of student teachers on teaching practice in schools when allegations are made against them. In the Union's experience, confusion can arise between the various organisations involved, namely the school, the higher education institution and the local authority, about who has the responsibility for investigating any allegation. Case Study (v) in Appendix C illustrates these problems.

20. The only reference to supply teachers in the current Allegations Guidance is very brief and hidden away in footnote 10 on page 58. No reference at all is made to the position of student teachers.

(ii) When suspension of the staff member concerned is appropriate

21. The Allegations Guidance states that suspension should not be automatic and that alternatives should be considered. However, many employers do not take this into account and suspend automatically, regardless of the nature of the allegation and without even considering any appropriate alternative option.

22. The Union is aware of a very small number of local authorities with policies that do specifically follow the guidance in relation to not suspending automatically and considering alternatives. Examples of the relevant extracts from two such procedures are included in Appendix E. It would be helpful if “best practice” examples could be included within the Allegations Guidance. The Union also believes that the guidance should require the employer to be able to justify any suspension, perhaps by way of conducting a formal risk assessment, before the decision is taken to determine whether there are any other alternative options available.

23. The Allegations Guidance needs to state that any suspension should be subject to regular review. Suspension is seen as a neutral act in law, but in a school environment, the sudden absence of a teacher fuels gossip and the prevailing “no smoke without fire” attitude means the teacher is invariably tainted by the suspension. For this reason, many teachers find it extremely difficult, if not impossible, to return to work after a lengthy period of suspension, even where they have been completely exonerated following criminal and employer investigations. Given the devastating effect a suspension can have on the individual teacher, the guidance should stress more strongly that any suspension should only be the last resort and for the minimum duration.

24. The Union’s casework experience suggests that employers are failing to keep in touch with members whilst they are suspended. Members are routinely informed that they must not contact any colleagues or pupils in the school, and this, combined with little or no contact with the employer, leaves them completely isolated. The guidance needs to stress that employers must keep in regular contact with the suspended individual, not just in terms of the suspension and progress of the investigation, but also to keep them informed about general developments in the school. Employers should also provide suspended teachers with access to occupational health and counselling services.

25. Some employers impose draconian conditions on suspensions, such as barring the teacher from attending any authority premises (including public swimming pools and libraries). The guidance should advise against this unreasonable and unnecessary practice.

(iii) When arrest of the staff member concerned is appropriate

26. The NASUWT has long been concerned about the insistence of police officers on arresting teachers when they attend a police station voluntarily and are willing to co-operate with an investigation into an allegation made against them. The Union does not believe that this approach meets the necessity test for arrest in Section 24(4) of the Police and Criminal Evidence Act 1984 (PACE). The Union lodged judicial review proceedings against the police in two cases (see Case Studies (vi) and (vii) in Appendix C). The outcome of which supported the Union’s view. As a result of this, fewer teachers should now suffer the humiliation of being arrested and having their DNA, fingerprints and photographs taken and retained when attending police stations following allegations by pupils. It should also mean that they are not subject to adverse information on CRB Enhanced Disclosures.

27. The NASUWT asserts that police should be better trained to apply the arrest provisions set down in Section 24 of PACE.

28. In addition, police officers often appear to be unaware of Section 93 of the Education and Inspections Act 2006, which specifically enables teachers to use reasonable force in specified circumstances, or the common law right of any citizen in an emergency to use reasonable force in self-defence, to prevent another person from being injured or his property from being damaged.

(iv) The retention of records of allegations found to be false

29. Paragraph 5.10 of the Allegations Guidance advises schools to retain a clear and comprehensive summary of any allegations made, how they were followed up and resolved and a note of any actions taken and decisions reached, with a copy kept on the individual’s personnel file. The NASUWT continues to have concerns about the inconsistent way information is being recorded and disclosed.

30. The NASUWT has longstanding concerns about the nature of non-conviction and internal disciplinary information (“soft-information”) being disclosed by local police forces and reproduced on teachers’ CRB Enhanced Disclosures.

31. Information is not being recorded fairly and consistently by the police or employers. Resolving this issue is of increasing importance in light of the new Vetting and Barring Scheme (VBS) under the Independent Safeguarding Authority (ISA), as information recorded by an employer about an allegation may be referred to the VBS and be considered under the discretionary barring procedures.

32. The Union’s casework experience demonstrates that it is rare for an allegation to be formally recorded as being “false”. In many cases, even if the police find the allegation to have been fabricated, the formal outcome is recorded as being “insufficient evidence to prosecute” or “no charges brought but the matter was referred to the employer to deal with internally”. This type of recording can be extremely misleading as it

implies that the police believed the alleged incident occurred but did not have enough evidence to successfully prosecute. The Union believes that where an allegation is proven to be false, the police should formally record the outcome as “allegation found to be fabricated” or “no case to answer”, to avoid the matter being recordable on a CRB Enhanced Disclosure.

33. The Allegations Guidance and the sections on recruitment and vetting checks (chapters 3 and 4) in *Safeguarding Children and Safer Recruitment in Education* need to include guidance as to what weight employers should attach to “soft information” on CRB Enhanced Disclosures, given that this often relates to allegations that have been unproven or found to be false. Many employers simply refuse to employ a teacher who has been subject to an allegation regardless of the outcome, erring on the side of caution rather than considering whether there was any substance to the allegation.

34. Paragraph 5.34 of the Allegations Guidance states that where an allegation is shown to be deliberately invented or malicious, the headteacher should consider whether any disciplinary action is appropriate against the pupil. The NASUWT believes that this should be strengthened. Further, the NASUWT is concerned that the guidance states the police should only be involved when the accuser is not a pupil. The Union firmly believes that where a pupil, particularly in a secondary school, has made a demonstrably false allegation, the matter should be referred to the police by the employer as a matter of course. The Union is aware of just one case where the police have cautioned a pupil for fabricating an allegation, but this was as a result of pressure from the member, not the school (see Case Study (viii) in Appendix C).

The NASUWT has provided appendices to this evidence separately.

May 2009

APPENDICES

INQUIRY INTO ALLEGATIONS AGAINST STAFF

- Chronology of actions taken since 1991;
- Data collected since 1991;
- Case Studies;
- Examples of good practice guidance from other professions; and
- Examples of good practice guidance from local authorities.

APPENDIX A

SUMMARY OF THE NASUWT ALLEGATIONS CAMPAIGN

- | | |
|------|---|
| 1991 | The NASUWT began to record statistics. |
| 1993 | The NASUWT continued to campaign for fair procedures for the investigation of allegations of abuse against teachers.

The Union made representations to the Home Office and DfEE over injustices arising from the operation of the List 99 procedure and the process for the criminal record vetting of teachers for employment purposes. |
| 1994 | As a result of pressure from the NASUWT, the six teacher unions and CLEA produced guidelines on the practice and procedure for dealing with situations where teachers faced allegations of physical and/or sexual abuse from pupils. ACPO failed fully to endorse the document. |
| 1995 | The CLEA/Six Teacher Union <i>Guidelines on Practice and Procedure for the Investigation of Allegations Against Teachers</i> were adopted by the Secretary of State and published as an annex to revised DfEE Circular 10/95 (<i>Protecting Children from Abuse: The Role of the Education Service</i>).

Substantial progress was achieved towards the negotiation of focused national guidelines designed to provide a degree of protection to headteachers facing charges of improper behaviour toward pupils.

The NASUWT made direct representations to the Home Office and ACPO over the detriment experienced by teachers as a consequence of the disclosure to employers of non-conviction information. |
| 1996 | Negotiations opened in respect of revisions to the CLEA/Six Teacher Union <i>Guidelines on Practice and Procedure for the Investigation of Allegations Against Teachers</i> to cover the situation of headteachers. |
| 1998 | The NASUWT held discussions with Crispin Blunt MP on his 10 Minute Rule Bill to curb the powers of the press in respect of reporting allegation cases before a full investigation has taken place or the member had been charged. |

- 1999 Crispin Blunt MP presented a Private Member's Bill, which was unsuccessful, to provide for the anonymity of teachers, citing the NASUWT's campaign and the Union's statistics on allegations in support of the Bill.
- 2000 The Union continued to press for legislative change to provide anonymity during investigations and other formal proceedings. Baroness Emily Blatch (Conservative) presented an amendment to the Sexual Offences Bill, which said: "(3A) Where an allegation has been made that a person has committed an offence under this section and the person is a teacher at an educational institution, it shall be unlawful to publish or broadcast that person's name or address or a still or moving picture of him before he is charged with the offence."
- Unfortunately, due to Government opposition and Parliamentary procedure, the amendment had to be withdrawn.
- The Union submitted a detailed paper to the DfEE regarding concerns over procedures, or lack of them. In response, the DfEE arranged discussions with ACPO, Social Services, the CPS and the Department for Culture, Media and Sport.
- 2001 The annex to DfES Circular 10/95 was amended to include best practice for dealing with educational staff who have been accused of abuse.
- In response to the NASUWT's concerns, the DfES established and funded a strategic network of 25 Investigation and Referral Support Co-ordinators (IRSCs) in regional clusters throughout England to work with local education authorities and Area Child Protection Committees (ACPCs), placing them close to their client and partner groups within the local structure.
- The Union introduced a specialist face-to-face counselling service for members subject to allegations of child abuse, which remains in place to date.
- 2002 The revised joint guidance produced by the six teacher unions and the employers was published.
- Joint guidance was also published on abuse of trust regulations.
- 2003 The NASUWT postcard and leafleting campaign for anonymity was launched.
- The Union provided written evidence to the All Party Group for Abuse Investigations.
- 2004 60,000 postcards were delivered to Downing Street. Claire Curtis-Thomas MP presented 30,000 of the responses to the House of Commons.
- Charles Clarke, Secretary of State, undertook to work with the NASUWT to improve the process of dealing with allegations against teachers.
- The Conservative Party Education Spokesperson also reiterated the Party's commitment to guarantee anonymity up to the point of charge.
- The ACPO issued revised guidance making it clear that anyone under investigation by the police should not be named or any details be provided to the press that might lead to their identification prior to them being formally charged.
- The Union undertook a Joint Critical Case Review with the DfES of allegation cases to identify the generic issues in cases that added to the stress and trauma of those accused and that increased the risk of exposure in the media.
- As a result, a consultation paper was issued by the DfES. The proposals included guidance to the police to ensure that anonymity up to the point of charge is maintained, a fast-track procedure to identify in days, rather than months or years, whether there is any substance to an allegation, a fortnightly review of the progress of cases, and rigorous national and local monitoring and evaluation of the new arrangements. The Government gave a commitment to keep the anonymity issue under review.
- The Government's Five-Year Strategy made a specific commitment to address the issue of false, malicious and exaggerated allegations against teachers.
- The Union also provided oral and written evidence to the Bichard Inquiry and highlighted the severe problems of inconsistency of police record keeping, inappropriateness of information held and the problems of disclosure.
- 2005 The Union secured a commitment from the Government to introduce a monitoring procedure to enable regular review and evaluation of the effectiveness of the new fast-track guidance with a view to the introduction of legislative changes if the problems still persist.
- The NASUWT also continued to highlight and campaign on the impact of soft information being retained to the potential detriment of teachers and raised these concerns in a consultation response to the proposed Post-Bichard Vetting Scheme (DfES), Regulations under Part 5 of the Police Act 1997 (CRB) and the proposed Code of Practice on the Management of Police Information (National Centre for Policing Excellence). In addition,

- the NASUWT also asserted that a police officer who discloses the identity of a person, prior to that person being charged for an offence, should be subject to disciplinary action for breaching the ACPO guidance on anonymity.
- 2006 The Allegations Management Advisers (AMA) network was established by the Government to work with Local Safeguarding Children Boards and their members.
The Minister of State for Schools and Learners, Jim Knight, invited the NASUWT to present the background to the anonymity issue to a cross party group of MPs, representatives from the House of Lords and the NSPCC.
- 2007–09 New measures to tackle pupil indiscipline were published by the Government with specific reference to disciplinary sanctions against those pupils who made false and malicious allegations against staff.
The Union provided a detailed response to the DCSF’s consultation on reviewing the guidance for schools when an allegation is made against education staff. The review was ongoing into 2008, with the Union being a member of the review steering group. The review was published in May 2009.

APPENDIX B

TABLE OF RESULTS AFTER INVESTIGATION OF ALLEGATIONS OF PHYSICAL/SEXUAL ABUSE AGAINST NASUWT MEMBERS

<i>Year</i>	<i>Allegations</i>	<i>NFA</i>	<i>To Court</i>	<i>Court NFA</i>	<i>Cautioned or Convicted</i>	<i>Total Concluded</i>	<i>Total Still Outstanding</i>
1991	44	33	11	5	6	44	0
1992	91	78	10	4	6	88	3
1993	153	130	22	12	10	152	1
1994	134	108	25	14	11	133	1
1995	103	93	10	3	7	103	0
1996	108	81	27	13	12	106	2
1997	118	96	21	14	7	117	1
1998	163	130	30	17	13	160	3
1999	190	169	21	17	4	190	0
2000	173	154	19	10	9	173	0
2001	183	164	18	15	2	181	2
2002	161	143	14	6	6	155	6
2003	191	171	20	12	6	189	2
2004	193	167	23	9	10	186	7
2005	170	154	16	8	8	170	0
2006	185	171	14	5	8	184	1
2007	192	173	11	3	7	183	9
2008	148	116	2	2	2	120	28
2009*	41	16	0	0	2	18	23
	2,741	2,347	314	169	136	2,652	89

* to date.

Please note: These figures will change as the results of investigations are received. This could occur some years after the initial allegation was made.

In addition, this table only includes cases where the Union was required to instruct solicitors for a police interview.

NFA = No Further Action

as at 7 May 2009.

APPENDIX C

Case Studies

CASE STUDY (i)

An allegation was made against an NASUWT member that he physically assaulted a Year 9 male pupil on 19 March 2007. The member was interviewed by the police on 4 April 2007. On 19 April 2007, the Union’s solicitors confirmed that the police would be taking no further action against the member. The member was not charged or cautioned with any offence. The Union subsequently discovered that two employees of Bradford Social Services had visited the member at his home on the day he was informed of the allegation. The member says they treated him like a criminal and were very intimidating. They informed him they were investigating his family situation under Section 47 of the Children Act 1989. The same social workers subsequently visited the member again the following day and allegedly pressurised him and his partner to sign a formal document confirming their agreement:

- not to physically chastise their son;
- to report any injury to their son to the Social Services duty worker;
- to co-operate with Social Services and other agencies involved; and
- to Social Services undertaking an assessment.

The member pursued a formal complaint against Social Services.

CASE STUDY (ii)

An NASUWT member teaching in a primary school in London was placed on gardening leave in June 2008 following allegations of child abuse from a parent. The member's headteacher and senior management team were fully supportive of him, as the allegations had come from parents who had made allegations against male primary school teachers before and seemed intent on preventing any males from teaching their children. The member is also a foster parent and a carer for his disabled wife. The allegations were referred to Social Services who instructed him that he was not to sleep overnight at his family home, which caused him and his family emotional trauma as well as practical difficulties. In addition, he was summonsed to an interview with Social Services. The case was reported in the press, which caused the member further distress. After approximately three weeks, the headteacher confirmed to parents that the police and Social Services had found no evidence to substantiate the complaints and that the case had been closed. Social Services' restrictions on the member were lifted and he returned to work. However, the member remained traumatised by the events and seriously considered leaving teaching.

CASE STUDY (iii)

A female pupil made allegations against an NASUWT member teaching in a secondary school in North Yorkshire on 11 January 2008. The member was suspended on 15 January 2008 without being told what the allegations against him were. The police interviewed the pupil but not the member and, on 21 January 2008, confirmed to the school that they would be taking no action. The school therefore instigated its own disciplinary investigation.

The member attended his first investigatory interview on 24 January 2008 but at this point, he was still not informed of the nature of the allegations. On 29 January, the employer wrote to the member informing him of the detail of the allegations. The pupil was not interviewed until 7 and 14 March 2008, some two months after the allegations were made. Nine other pupils and another teacher were interviewed over April, May and June. It was clear from the pupils' responses that there had been considerable discussion amongst Year 11 pupils about the allegations. In addition, a number of the pupils made reference to the headteacher questioning them about the member prior to their interview, although no notes of these conversations were ever disclosed or referred to during the disciplinary investigation and hearing.

On 29 June 2008, the pupil who made the original allegation came forward with a further allegation about an incident she alleged occurred in Summer 2007. The member was interviewed on three more occasions, but these meetings were described as "pre-disciplinary interviews", which did not exist under the school's disciplinary procedure and suggested to the member and his Union representative that an assumption of guilt had already been made by the investigators.

It was also clear that the employer did not seek to investigate all avenues in order to seek the truth about the allegations, as 22 additional potential witnesses (mostly suggested by the member, but some named by the pupils interviewed) were not questioned. The investigation amounted to a trawling exercise to find damning evidence and elicit more allegations. It failed to explore potential evidence that could have proved the teacher's version of events. These concerns were raised by the NASUWT at the beginning of the disciplinary hearing before a panel of governors. As a result, the panel acknowledged there were problems with the investigation and procedure. The panel decided that the overarching allegation of "inappropriate behaviour of a sexual nature" was not evidenced, although the member was issued with a final written warning in relation to four less serious allegations.

CASE STUDY (iv)

An NASUWT member was working as a supply teacher through an agency at a secondary school in Lancashire. On 8 November 2007, the member was suspended for allegedly having an inappropriate relationship with a female looked after pupil. The pupil fell under the jurisdiction of Blackpool Council. However, the teacher was investigated under the procedures of Lancashire County Council. At a Section 47 strategy meeting on 15 November 2007, concerns were raised about the relationship between the teacher and the pupil. Social Services and the police visited the teacher at home and her ongoing suspension was confirmed. At a second strategy meeting on 3 December 2007, it was decided that further investigation was necessary. The member's agency informed the member she would not be considered for further employment whilst the investigation was ongoing. To date (11 May 2009), no formal conclusion to the investigation has been reached.

by Lancashire County Council or Blackpool Social Services. No formal investigatory interview with the member has ever taken place in contradiction of Lancashire County Council's Child Safeguarding Procedures. On 16 July 2008, a report was received from Blackpool Social Services, but this reached no conclusion and stated no outcomes. In a letter dated January 2009, the County Council appeared to be retrospectively pushing responsibility to investigate onto the teaching agency in their capacity as "employer". The agency finally held a "Disciplinary Investigation Meeting" on 16 September 2008 (some 10 months after the allegation was made). The investigation found that the teacher's conduct was "inappropriate" and that the member's relationship with the pupil in question "went beyond the professional boundaries of a teacher". However, no disciplinary action was to be taken against the teacher, but before she could be considered for further placements, the member was required to undertake child protection training. This training was finally scheduled to take place in March 2009. The member attended the venue for training as scheduled but on arrival was told that no training was required and that she would simply have to go through the induction notes given to new teachers. To date, the member has not received the induction notes. The member has had to re-register with the agency but has still not yet been given any teaching placements.

CASE STUDY (v)

An allegation was made at the end of the Spring 2007 term against a student member of the NASUWT who was undertaking teaching practice in a school in the Yorkshire and Humberside Region. The school did not investigate the allegation, but refused to allow the student to continue his placement there. The member was due to qualify in Summer 2007 and had a job offer to commence in September—he was therefore at risk of losing this job if he was not able to finish his teaching practice. The NASUWT Regional Official wrote to the school, the University and the two Child Protection teams involved requesting that the allegation be investigated in order to resolve the matter. (The police were informed but declined to investigate as they felt no criminal offence had been committed.) A consensus was eventually reached that the University should investigate. The University finally confirmed it had investigated and was satisfied that the member was suitable to work with children, and stated that he should be supported in order to complete his teacher training. The only point outstanding then was whether the member could start at the school where he had obtained a job from September. The school was supportive and prepared to allow him to complete his final teaching practice there but the local authority had reservations. The member did, however, start work at the school as an unqualified teacher in order to complete his final teaching practice.

CASE STUDY (vi)

In March 2006, the NASUWT secured a settlement from the police following the unlawful detention of a member at a police station. The supply teacher member from the West Midlands was accused of assaulting a pupil and was taken to her local police station for questioning. She was arrested and questioned, following which a "no further action" decision was taken. At this point, the member should have been released, but she was detained and her photographs, DNA and fingerprints taken. The NASUWT submitted a judicial review application against the police decision to detain her and was given leave to proceed by the Court. The police then conceded the claim in full, agreeing to destroy the records and they paid, to the member, a token amount of compensation.

CASE STUDY (vii)

An NASUWT member voluntarily attended Washington police station in May 2008 where, despite protests from his solicitor, he was arrested over allegations of common assault against a school pupil. He was later cleared of any wrongdoing. As part of the arrest process, the police took DNA samples, a photograph and fingerprints. By law, police can keep these records irrespective of the outcome of the arrest. The Police National Computer (PNC) had also been marked with "CJ arrestee", which would lead to disclosure to any prospective employer carrying out the obligatory enhanced Criminal Records Bureau Check. The NASUWT challenged the legality of the member's arrest and sought destruction of his personal records. The High Court granted permission for a judicial review, but on 1 May 2009, a few days before the full hearing, the police conceded, agreeing to a Consent Order declaring the arrest unlawful. An order was made that the photographic, fingerprint and DNA records be deleted and the PNC was amended. This climbdown has implications throughout the public sector and will significantly change the way teachers who are accused of assault are dealt with by the police. The decision implies that police should be better trained to apply provisions of the Police and Criminal Evidence Act 1984 (PACE) when dealing with teachers and other public servants. Regrettably, the member has now left the teaching profession after 15 years' service because of the trauma caused by this ordeal.

CASE STUDY (viii)

An allegation was made against an NASUWT member in Flintshire on 15 February 2007 that he held a penknife to a female pupil's throat and threatened to kill her. The Union's solicitors were instructed to represent the member. On 6 March 2007, the Union's solicitors confirmed that the police would be taking no further action against the member. They subsequently provided a copy of an e-mail from the investigating police officer, which unusually confirmed that the investigation had revealed the allegation was completely made up. The member had not even been interviewed by the police. On the Union's solicitors' advice, the member then lodged a formal complaint against the pupil to the police. The Union was advised that the pupil had been cautioned for "making false witness". The police subsequently confirmed in writing that the pupil "was arrested and formally reprimanded for her actions". As far as the Union is aware, no disciplinary action has been taken against the pupil by the school.

APPENDIX D

EXAMPLES OF GUIDANCE DOCUMENTS FOR DISCIPLINARY/REGULATORY PANELS

GENERAL TEACHING COUNCIL

Guidance for Members of Disciplinary Committees

See section 3.18 on voting and decision making, which provides guidance on the burden and standards of proof to be applied, and deciding whether the facts do amount to unacceptable professional conduct.

Indicative Sanctions Guidance

This provides Professional Conduct and Competence Committees with guidance on how to determine an appropriate sanction.

GENERAL MEDICAL COUNCIL

Making decisions on cases at the end of the investigation stage: Guidance for Case Examiners and the Investigation Committee

This provides guidance for the investigation stage of "fitness to practise" allegations, giving general advice, guidance on terminology and case examples.

Managing Fitness to Practise Panel Hearings—Guidance for panel chairmen

This provides guidance to panel chairmen on matters such as the standard of proof, mitigation and sanctions.

COUNCIL OF THE INNS OF COURT

Sentencing Guidance: Breaches of the Code of Conduct of the Bar of England and Wales

This document provides guidance to decision makers on sentencing barristers who breach the code of conduct and includes advice on proportionality and consistency, as well as aggravating and mitigating factors.

APPENDIX E

EXTRACTS FROM LOCAL AUTHORITY DISCIPLINARY POLICIES REGARDING
SUSPENSION

SUNDERLAND—EMPLOYMENT POLICIES, PROCEDURES & GUIDELINES FOR SCHOOLS (PAGE 11)

7. SUSPENSION

7.3 If it is necessary to remove an employee from his/her workplace to allow an investigation of the alleged misconduct, wherever possible the Headteacher should consider alternatives to suspension, eg different workplace or paid leave of absence.

NEWCASTLE—DISCIPLINARY PROCEDURE (PAGE 7)

6.2.3 Conduct a formal investigation:

- Before proceeding with the investigation, the head teacher must also decide whether the employee during the investigation:
 - remains at work undertaking their normal or alternative duties;

- is placed on paid leave on full pay; or
- is suspended from duty on full pay.

May 2009

Memorandum submitted by the Teacher Support Network

EXECUTIVE SUMMARY

- Whilst allegations of improper conduct against school staff appear to be becoming more frequent, very few of these allegations are eventually proven to be true. Nevertheless allegations are being handled in a way that can be traumatic and sometimes permanently disruptive to a teacher's career, irrespective of guilt.
- All members of staff who are subject to an allegation are automatically sentenced to a period of concern and uncertainty which can endanger their health, wellbeing and career as a whole. A teacher's work can be significantly disrupted and their relationship with colleagues and pupils can be severely strained. If the teacher returns to work, they may find it extremely challenging to recover the trust, respect and confidence that they previously had in the school.
- Teacher Support Network dealt with 132 calls from teachers about allegations last year alone. The total number of individuals affected by these cases will be even larger. Allegations have the power to be extremely destabilising in a school and incredibly upsetting for a teacher's friends and family.
- Every reasonable step, including revising guidance, should be taken to ensure that allegations do not unduly damage schools or the teacher concerned. If the impact of the investigative process per se can be minimised, the attraction of making false or malicious allegations may diminish.
- Teacher Support Network recommends several changes to guidance for schools, teachers facing an allegation and the Police. These include:
 - (i) informing a teacher of available emotional support services at every stage of an investigation,
 - (ii) not amending personnel files and Criminal Records Bureau (CRB) Disclosures unless guilt is clearly evidenced, and
 - (iii) advising the Police how to bring minimal disturbance, professionally and emotionally, to a school and its staff during an investigation.

ABOUT TEACHER SUPPORT NETWORK

1. Teacher Support Network provide practical, emotional and financial support to teachers throughout the UK. Our team of qualified coaches, advisers and counsellors run a free confidential support service on the phone and online, which is available to any training, serving or retired teacher at any time, 365 days of the year. Previously known as the Teachers' Benevolent Fund, we also provide financial support to teachers in need. The last decade in our 132 year history has seen our reach expand almost 10-fold; now serving education professionals over 100,000 times a year.

2. In addition to these responsive services, we also carry out a plethora of proactive work to improve the health and wellbeing of teachers. Analysis of our service usage gives us a clear indication of the problems that teachers currently face. We will then run appropriate surveys and campaigns to investigate a problem further, raise awareness and alleviate problems troubling teachers. We have also established a sister social enterprise company—Worklife Support—which runs the National Wellbeing Programme; designed to improve the wellbeing of the whole school community.

The scale and nature of allegations of improper conduct made against school staff

3. Sources suggest that whilst allegations of improper conduct against school staff are becoming more frequent, very few of these allegations are eventually proven to be true. Nevertheless, the allegations are being handled in a way that can be traumatic and sometimes permanently disruptive to a teacher's career, irrespective of guilt.

4. A Freedom of Information request last year suggested that the number of allegations against school staff were on the rise. Among the 40% of local authorities who responded to the BBC reporter Donal McIntyre's request, the number of teachers being suspended had risen from 168 in 2003–04 to 314 in 2007–08. The most common reason for suspension was said to be child protection issues, which typically related to allegations of verbal abuse, unreasonable force against a pupil, indecent assault, and downloading pictures of child abuse.

5. Several sources suggest that a clear majority of improper conduct allegations are not successfully proven. In March 2008, the NASUWT reported that out of 2,231 concluded allegations cases among its membership, only 105 (approximately 5%) had resulted in action being brought against the teacher. At the same time, the ATL reported that in 75% of its allegation cases, the Crown Prosecution Service took no

action against the teacher involved because there was a lack of evidence. In the last Allegations Audit by the Government in 2002–03, two-thirds of investigations into allegations against education staff led to no police prosecutions.

6. A considerable number of these unproven allegations are said to be untrue or malicious. In a 2007 ICM/*Guardian*/Headspace survey of 825 head teachers, 59% of secondary heads said that either they or one of their staff had received a false complaint relating to bullying, neglect or verbal or physical abuse during the last three years. This year, the ATL reported a significant increase in the number of allegations against staff that subsequently turned out to be “hugely exaggerated, false or even malicious”. Despite this, all members of staff who are subject to an allegation are automatically sentenced to a period of concern and uncertainty which can endanger their health, wellbeing and career as a whole.

Whether staff subject to allegations should remain anonymous while the case is investigated

7. Much more needs to be done to protect a teacher’s professional reputation and personal wellbeing when allegations are made against them. Current procedures, where teachers are punished irrespective of guilt, must change.

8. The initial response to an allegation can be unnecessarily traumatic for teachers and disruptive to schools. As the figures above suggest, hundreds of teachers can be swiftly suspended once an allegation is made against them. This means that, even before an allegation has been investigated, the teacher’s work is significantly disrupted and their relationship with colleagues and pupils is severely strained. If the teacher returns to work, they may find it extremely challenging to recover the trust, respect and confidence that they previously had in the school. This will damage their personal wellbeing and professional effectiveness, perhaps irrevocably. In the process, a school without adequate insurance will also lose financially; paying the salary of the suspended teacher as well as those providing temporary cover.

9. Subsequent investigations into allegations can also damage teachers and schools alike. A teacher facing an allegation may be formally arrested, photographed, fingerprinted and even held in custody while police investigations take place. Details of investigations may be disclosed in Criminal Records Bureau (CRB) checks—affecting a teacher’s job prospects—and they may be reported to the General Teaching Council (GTC), who will then post their name on a publicly-accessible web page for the duration of an inquiry. Overall, this process is undeniably traumatic for the teacher in question. Sadly, it may force them to consider leaving the profession, even if they are entirely innocent.

10. The anonymous Teacher Support Network phone call case study at the end of this submission helps to describe the extreme emotional strain that a teacher can go through if they face an allegation. Overall, Teacher Support Network received 132 calls from teachers about allegations last year alone. This is a worryingly large number, but the number of families and colleagues affected by these cases will be even larger. Allegations have the power to be extremely destabilising in a school and incredibly upsetting for a teacher’s friends and family.

11. Teacher Support Network fully understands the importance of protecting children from abuse, but it is wrong that any teacher should have to endure such a damaging investigative process when a false or malicious allegation is made. It is also wrong that a school should be deprived, temporarily or perhaps permanently, of the talents of an innocent teacher. It is clear that teachers should be better protected whenever an allegation is made against them, so that their work is minimally disrupted and their name is not tarnished. Preserving anonymity wherever possible if the teacher wishes (except in cases of confirmed guilt) is crucial to this, so that their work and career prospects are not unfairly affected.

Whether the guidance available to head teachers, school governors, police and others on how to handle claims of improper conduct by school staff should be revised

12. Every reasonable step, including revising guidance, should be taken to ensure that allegations do not unduly damage schools or the teacher concerned. If the impact of the investigative process can be minimised, the attraction of making false or malicious allegations may diminish. Teacher Support Network has observed that awareness of guidance changes can be very low, so any alterations should be accompanied by effective awareness-raising campaigns.

13. We believe that the following points should be included in all relevant guidance:

- When an allegation is made, the teacher in question should be assured by their school and the designated local authority officer that legally-required guidelines will be followed and that they should be able to continue their work as much as possible while the allegation is investigated. The teacher should be reassured that the school and all other authorities involved will presume their innocence unless there is sufficient evidence to the contrary.
- Any teacher facing an allegation should be informed of available emotional support services, including Teacher Support Network’s and the support services provided by the teacher unions.
- Any teacher facing an allegation should receive up-to-date guidance on their rights and responsibilities during the investigation process. This should include information on the benefits of voluntarily supporting police investigations, for example.

- The teacher should have a choice about the degree to which the allegation is shared with other members of the school community. Unless the teacher requests otherwise, any connected pupil and their parents or carers should be asked not to disclose information of the allegation to others.
- Case studies should accompany more detailed guidance which advise when suspension or police involvement is appropriate. This important decision can be oversimplified in existing guidance. For example, *Safeguarding Children and Safer Recruitment in Education* provides detail in one section, but simply advises that “the procedures need to be applied with common sense and judgement” (5.14, p 61) in another.
- Unless the teacher agrees, a record of a false or malicious allegation should not be kept on their confidential personnel file, provided that no record is to be kept on their future CRB Disclosure either. Existing guidance is ambiguous on this matter, particularly in circumstances where a teacher resigns during an investigation into a false allegation (for example, 5.49, p 67 of *Safeguarding Children and Safer Recruitment in Education*).
- No case should be referred to List 99, the CRB or the GTC if the allegation is found to be unsubstantiated, irrespective of whether the teacher leaves their post.
- Appointed Police senior officers and unit officers for school allegations cases should be advised how to ensure that a school and any staff facing an allegation are disturbed, professionally or emotionally, as little as possible. Police should also receive revised guidance for the application of the Police and Criminal Evidence Act. As the successful 2009 High Court appeal of History teacher, Mr Matthew Wren, shows, it is vital that the Police do not note voluntary interviews on the Police National Computer, for example.
- Any teachers preparing to return from suspension should be given information about available support services, such as Teacher Support Network’s and the teacher unions’.

Teacher Support Network anonymous case study—false allegation

14. John is an experienced teacher aged 45; employed at a special needs school. When he contacted Teacher Support Network he was feeling low and unsure of the teaching profession in general. Two days before, out of the blue, he was accused of sexually assaulting a child.

15. The allegation was totally unfounded and the child concerned admitted this when they were asked about it further. They had simply not wanted to take part in John’s lessons any more and this was the way they chose to get out of them. John could not get over the fact that the allegation was totally unfounded and that the school had not taken any disciplinary action against the child.

16. John had not returned to the school since the allegation was made. He was feeling very unsupported by the school and was shocked that he could be accused of such a serious offence. It had never happened to him before. As a result, he was considering leaving teaching altogether.

17. When John called Teacher Support Network, his call was taken by a trained coach who listened to his thoughts and feelings about the whole situation. The coach encouraged John to talk about his wellbeing and come to terms with the situation. John had a lot of questions which the coach was able to help him address, such as: why did the child make the allegation, what were his options, why couldn’t he bring himself to go back to school and where could he go from here?

18. John was receiving practical support from his union, but he had wanted additional emotional support. By talking to a Teacher Support Network coach, John was helped to identify what it was that he found most upsetting; the feeling of vulnerability as a teacher and the worry that he may not want to return. John and his coach went on to explore possible outcomes which led him to think about how much he enjoyed teaching, how he needed to work for practical reasons, and how rewarding his work at the school usually was.

19. Through talking to Teacher Support Network, John realised that although leaving teaching was an option open to him, there were other options too. He realised that he would be in the same position in any other school, and he decided to work through his feelings of vulnerability. To do this, he decided to set up a meeting with his head teacher to discuss his feelings and make arrangements for additional support from the school. He was also thinking of establishing guidelines in the school to safeguard him and his colleagues from false allegations in future.

Encl:¹

- Report on BBC Radio 5 Live Donal McIntyre’s Freedom of Information request, September 2008.
- Report on ATL and NASUWT false allegation cases, March 2008.
- Audit of allegations against teachers and other staff in the education service—September 2003 to August 2004, DfES.

¹ Enclosures not printed.

- 2007 ICM/*Guardian*/Headspace survey report, September 2007.
- ATL “Report” monthly magazine article, April 2009.
- *Safeguarding Children and Safer Recruitment in Education*, DCSF, January 2007.

May 2009

Witnesses: **Michael Barnes**, National Secretary, FACT (Falsely Accused Carers and Teachers), **Amanda Brown**, Head of Employment, Conditions and Rights Department, NUT, **Paul Kaufman**, Partner, Wiseman Lee LLP, **Chris Keates**, General Secretary, NASUWT, and **Julian Stanley**, Chief Executive, Teacher Support Network, gave evidence.

Q1 Chairman: I welcome our witnesses to the Committee: Amanda Brown, Chris Keates, Julian Stanley, Paul Kaufman and Michael Barnes. We always appreciate it when people come and help us with an inquiry. Unusually for us, as we seem to be in the middle of a series of long inquiries at the moment, this a very short inquiry. We believe that there is a lot of interest in this subject, both in the teaching profession and elsewhere. So, it is something that we think needs an airing in front of the Committee. Thank you for volunteering to assist us. We have had about 30 written submissions on this subject and they have been most useful as well. We have been a little disappointed by the lack of evidence from one or two sources that we expected to be more helpful, particularly the Department. We are reasonably well informed, but we will end up better informed after today. I am going to ask all of you this question, but I am going to start with Chris Keates; some of you will have to wait to catch my eye. How much of a problem is this?

Chris Keates: This has been an ongoing problem. The NASUWT has been tracking this since 1991, we have done 18 years of work on this. I think I am right to say that we are the only union that has a database that goes back that far showing the issues relating to allegations made against staff. It is a problem and if you have had the opportunity to look at our statistics, bearing in mind that we are only one of the five teaching unions, you can see that this has been on the increase since 1991 in terms of allegations that have been made. The overwhelming majority of the allegations were found to have had no substance; only a tiny percentage of allegations have substance. As far as the profession is concerned, it is something that teachers raise as a concern—it is actually raised by graduates thinking of entering the profession, who have heard of allegations being made—and it is something that crops up quite frequently. When we go into schools where there are behavioural issues, staff tell us that pupils frequently say to them that if they were to make an allegation then the member of staff could lose their job. There is a real issue and climate in the schools and I think teachers and head teachers will welcome the fact that you are looking at this detail.

Q2 Chairman: Paul Kaufman, there is a smack of guilty until proven innocent in some of the cases that have come across my desk. Is that right?

Paul Kaufman: In my experience, teachers certainly feel that they have been found guilty before the case has been heard. In the way that they are treated—by being suspended, by being arrested, by being

fingerprinted, photographed and having their DNA taken—the whole approach suggests to them that they are assumed to be guilty and they have to prove that they are innocent.

Q3 Chairman: Julian, I am also picking up, certainly in the cases that I have been involved with as a constituency MP, that there are so many waves of investigation. One that I was involved with started with a police investigation, which found that there was no case to answer. When that was finished, the children’s services had an investigation, which after many months found that there was no case to answer, and then there was a school governors’ inquiry. Three inquiries, all of which said that there was no case to answer. The person involved was off school for a very long period of time; their health, particularly, was impaired. The upshot was that he had no case to answer from any of the investigations, but he still has all of that on his police criminal record. Is that typical?

Julian Stanley: Yes. There is a number of issues. Last year, at the Teacher Support Network we took around 132 calls on this subject. That is consistent with recent years. We are finding that people experience incredible emotional and psychological distress through this process. One of the things that the trade unions have worked very hard to do is provide adequate advice. We would like to see more of the kind of support that we offer, which is counselling and coaching, through the process, because, as you point out, it can be very long and protracted. One of the other issues that the council has often come up against is that people are often concerned about what appears on a criminal records check later on and the damage—the potential damage—to careers later. So what is recorded, and how it is recorded, is particularly significant. I notice that the DCSF has begun to accept that the guidance might be amended in the longer term to improve education about what needs to be recorded for the sake of references in the future. We believe that, really, teachers need to have a part in what is recorded, particularly—obviously—if they are found innocent. We don’t want to return to a situation where children are not believed and parents’ concerns are not addressed, but clearly the length of time that the processes take is of considerable concern, as is the distress it causes to families and friends, and teachers’ standing within the school. Returning to work, if someone is found innocent, is quite a difficult process, because

reputations are already damaged, relationships are already impaired, and coming back into that environment can be extremely difficult.

Q4 Chairman: Michael, what is your take on this? The fact is that certain people, like some of the children's charities—the NSPCC—don't agree with the views of most of the panel here. We have not got them in front of us today but they are very strong on child protection and children's rights and would hate to see any change in the situation. Does it worry you that the NSPCC is not with you?

Michael Barnes: It does worry me, but of course it is not just an issue for the NSPCC. It is a wider issue for the child protection sector. Unfortunately, as has already been suggested, there is an overwhelming presumption of guilt in the accused, and an overwhelming presumption of truth in the accuser. Simply by the law of averages there are going to be occasions when people make truthful allegations and there are going to be occasions when they make untruthful allegations. What I think would be more encouraging is if the child protection social workers and the NSPCC acknowledge that false accusations do occur. They are very reluctant to do so and I think that is a great pity. If I could just comment on the CRB issue, the important thing about it is the way the information is fed into the police.

Q5 Chairman: Can we hold on that one, because we are going to drill down on it. I am only the warm-up—the real questions come in a minute. Amanda, I am not going to let you escape. The NUT is not so worried about this as other unions—or are you?

Amanda Brown: Oh, we are worried about it, certainly. We would say that probably the number of allegations—certainly over the last 10 years, we feel—has stayed about constant at about 200 a year; but that 200 is the number of times we instruct solicitors to attend the police station. There are all sorts of other allegations that don't meet those criteria, so there are a lot more than that. But it is not just those. As Chris has said, the number that are actually found to be at fault, either in terms of a criminal allegation, or, otherwise, a professional allegation and misconduct, is very small. But it is the chilling effect it has for all teachers, and certainly particular groups of teachers, who are concerned, depending on their job and exactly what their role is in school, that they may be the subject of an allegation. The impact of that can be so great, as others have said, that even if people are not themselves the subject of an allegation, the fear is there. We are worried both for those who are accused and for the effect on the profession as a whole.

Q6 Chairman: So, Amanda, we don't really know the numbers—the Department doesn't know the numbers—if we take all allegations, because what you are saying, and what I think Chris Keates was saying in her written evidence, is that we know if it goes to the length of the police being involved and someone being charged, but we don't know those

ones that have been settled more locally, perhaps in-house or by the local authority doing a quick investigation. We actually don't really know the full numbers, do we?

Amanda Brown: We may well not know the full numbers, and there is also difficulty in definitions, because when people talk about child protection everybody assumes it is something to do with sexual misconduct, but almost all the allegations that are made against NUT members, and I would guess against all teachers, are actually about physical restraint issues and discipline issues. A tiny number have anything to do with sexual misconduct, and most of those are around computer issues—downloading of information, that sort of thing. There is a real difficulty in knowing the scale of the problem.

Q7 Chairman: It is interesting that when we did the inquiry into bullying, we pushed for there to be a register of all incidents of bullying in the school. The Department was very reluctant to keep a register. But it would seem that it is quite important to keep a register of allegations of any type in a school, so we actually know what the level is.

Amanda Brown: Very much so, because of knowing the scale of the problem and being able to define it. Also, particularly with child protection issues, if there is a large number of false allegations, which we say there is—I know that there is a dispute about that—there might actually be other issues behind that, which need to be dealt with. For example, we know that where there have been constant, or continual, allegations made by a few pupils, sometimes there is another issue behind that, which really ought to be looked at. If it is only dealt with in terms of the teachers and the people facing the allegations, there might be a real problem that we are missing.

Chairman: So, we are quite clear from the evidence we have had already that we all want children to be protected fully, but we also want a balance and a fair system by which allegations are effectively and, hopefully, quickly resolved. I have warned you up, and Graham is going to do the serious questioning.

Q8 Mr Stuart: The Association of School and College Leaders has said that allegations are very rare in some schools and colleges but frequent in others. According to its report, it is less to do with the behaviour of teachers and more to do with the attitude of children and their parents. How can we resolve that particular issue?

Chris Keates: First, I am not sure that there is a strong evidence base for that. I know the Department for Children, Schools and Families did some work when they were reviewing the handling of allegations on where in local authorities allegations were actually from, and there did seem to be some schools that have more of these than others. That is absolutely true. I don't think we have got absolutely concrete evidence. I think the issue is not to get too sidetracked with that but to make sure that what we have got is a fair, open and transparent system for how these things are dealt with. They are all dealt

17 June 2009 Michael Barnes, Amanda Brown, Paul Kaufman, Chris Keates and Julian Stanley

with in a way that protects the interests of all involved, including the children and young people. There are clear procedures that are consistently followed. The Department's guidance on handling allegations of abuse has been refined over the past few years. We were instrumental in getting the fast-track part of that. It has recently been reviewed and that has been published. It shows that it has made some improvement, but the big problem is that there is no consistency of application. People use their own procedures, and I think there is a case for making some of the procedures statutory at the school level as opposed to statutory at some of the child protection levels that are across local authorities with area protection boards and so on.

Q9 Mr Stuart: But a reason to focus on this particular issue would be if schools with the biggest discipline problems—perhaps with the lowest performance and with the greatest challenge of attracting good teachers—also had the highest number of complaints. Is there any evidence of that?

Chris Keates: I have certainly not seen any evidence that there is that correlation, and I have not seen any strong evidence of a correlation necessarily with behaviour problems. Our experience of casework shows that we can get allegations in a school where our members have not reported any particular difficulties as far as behaviour is concerned. What we are dealing with is a very complex issue of what motivates some children and young people to make the allegations. With some it is a cry for help. They are in serious need themselves. For others, it is quite a calculated move to try to undermine a particular teacher for a real or perceived slight that they feel they have had, or the fact that they have been challenged for misbehaviour, so you have got those at both ends of the scale. I think we could get too focused on, "It is certain schools and it is another indicator of poor performance in this school." I don't believe that is the case.

Q10 Mr Stuart: You said that in many cases it might be a cry for help. You would think that that would be more likely to occur in a school that already had the most challenging intake. Obviously, if there is an impact on the ability to attract and retain the best teachers because of a perceived lack of discipline, you would be further entrenching disadvantage. Does anyone disagree with Chris? Does anyone believe that there is no correlation, or is it simply that we don't have the data because there is not a definitive set of figures produced to show where complaints occur?

Michael Barnes: I think there is another issue here. In those schools where there appears to be a culture of complaints one needs to ask why that is so. It may well be that there is more to complain about, but it equally may be that within those schools the young people themselves—the students—have cottoned on very quickly to the fact that by making complaints they can achieve the outcomes they desire. There is a knock-on effect in some instances.

Q11 Mr Stuart: The Department says it is rare for an allegation to be deliberately false and malicious and yet the NASUWT numbers show that of 2,231 concluded allegations cases among its membership, only 105—approximately 5%—resulted in any action being brought against the teacher. The NUT numbers, although smaller, produced exactly the same result. Is the Department wrong, or am I reading the wrong things into your figures?

Amanda Brown: I think there is an issue about the definition here. We would take a false allegation as being one where there is no outcome that lays blame on the teacher. The DCSF, as I understand it, looks at a situation and asks whether there was anything that could have resulted in an allegation. So, for example, in a discipline issue, if a teacher has intervened to break up a fight in a playground, the DCSF won't treat it as a false allegation if they are cleared of any misconduct, but say that there was an issue. There was a nugget of factual information, which means that it was not a false allegation. There is a difference of definition there.

Q12 Mr Stuart: Does anybody prefer the Department's definition?

Paul Kaufman: The Department does not provide any evidential basis for the presumption that it is rare. It just states it as a fact, without supporting it in any way. In my experience the great majority of allegations are exaggerated and fabricated by pupils.

Chris Keates: I think the DCSF's attitude highlights what I think is a real political tension. The political tension for a Department for Children, Schools and Families is being seen to accept that false allegations are being made against teachers in this highly charged area of child protection issues, which, of course, recently have been very much to the fore in the focus. There is sometimes a reluctance by authorities—be it local authorities or government departments—to be seen to come out and say, "Yes, there is this problem of false allegations," because it might be seen as trying to protect abusers, which the NASUWT has been accused of doing over the years by various groups. That is not the case at all. It is about making sure that there is justice for people and a proper investigation. That is one of the reasons why they dance on the head of a pin about what is a false allegation.

Q13 Mr Stuart: Are the majority of allegations against male teachers and if so, do we need any form of gender-specific response?

Amanda Brown: Certainly in our experience they are generally made against male teachers. I don't know whether they are seen as an easier target or whether it is because of their greater involvement in playground watching duties. Certainly our experience is that most of the allegations are against male teachers.

Q14 Mr Stuart: To what extent are disciplinary procedures more likely to be implemented and used against troublesome members of staff or supply teachers? I have a constituent who felt that because they were in a very poorly performing school in a

17 June 2009 Michael Barnes, Amanda Brown, Paul Kaufman, Chris Keates and Julian Stanley

neighbouring authority and they raised their doubts about that with the management of that school they were hung out to dry when they left the room for 20 seconds and something happened in the classroom. They were drawn out by a lack of discipline in the corridor and yet they were suspended and effectively banned from teaching in two local authority areas. Is there any evidence to back up those fears?

Chris Keates: There is no doubt that some school managers are more receptive to complaints about some teachers. That is probably a fact of life across all organisations, and it becomes particularly important when it happens here. As we say in our written evidence, the whole issue of supply teachers needs separate consideration. I hope the Committee will look at that. There are some grievous injustices against supply teachers. Often they don't have what you might term their day in court. They are simply sent away from a school and never used again, their agency does not follow up with any procedures and there is nothing of any substance in the Government's guidance to schools and local authorities about how supply teachers should be dealt with. So there are real issues about supply teachers being able to clear their name, in a context where even teachers on the staff of a school have difficulty in clearing their name once they have been the victim of an allegation.

Chairman: We have to move on, only because we have so many questions to ask you.

Q15 Annette Brooke: It is my job to ask you about procedures. Please don't see this as a test, but the Committee would find it helpful if you would talk us through a typical sequence of events. We have a chart in front of us, so it does look like a test, but I am not sure this is right, so we really want to get a feel of what would typically happen. I presume you have a hierarchy of responses, depending on the severity of the case, but that might not be the case. Our chart starts with "allegation made and communicated to head teacher". I was looking at the unions to start with, just to give us a feel of what typically happens.

Amanda Brown: Although you have the chart of what is supposed to happen and the procedures as they are supposed to work, it doesn't always happen in that way. One of the problems that started to be flagged up earlier is that head teachers, who may, hopefully, deal with this once in their career, if that, won't necessarily be au fait with what they are supposed to do and will be looking at a quick guide. We would say that they should have much more training on how to deal with these things, because they will have to respond in an emergency situation where there are heightened fears and heightened tension. They need to prepare for that in advance, rather than having to work out what to do at the time. As to how it might go, yes, an allegation might be made to the head teacher, or to another teacher, and it might be made to a designated teacher in the school who has responsibility for child protection, which could be the head teacher or somebody else. Occasionally, a parent will go direct to the police and we find that sometimes those situations are much

more complicated because it raises the stakes very early in the game if the parent goes directly to the police rather than raising it through the school. If the allegation is raised with the school, the head teacher will then have to consider how to take it further and they will be told that they should be talking to the LADO, the local authority designated officer, and they will talk through the issues with the local authority officer. We are concerned that head teachers are not allowed to exercise more professional judgment at that time, because there will be times when a head teacher could say, "I know that this is manifestly absurd, I know that this could not possibly have happened and I am not going to raise the stakes by moving on to the next step in the procedure." We would like there to be, as there used to be, more of a role for head teachers to make a professional judgment. Was the teacher even on the school premises at the time? What happened? That sort of judgment. The head teacher will talk to the LADO and decide what level of case it is: whether it needs to go to a multi-agency approach, whether other people need to be involved, whether it is a matter for the police and whether there is a potential criminal offence. That is another key point because, as I said, most of these cases are about restraint, about reasonable use of force, and if a dispute between a pupil and a teacher is over whether the use of force was reasonable, there is almost always a potential criminal offence there, because if a teacher could, potentially, have used too much force, that is a potential criminal offence immediately. That needs to be further clarified—if this was a playground problem, or a removal from class, where there is no real issue about assault, that should not necessarily be referred immediately to the police. You might want to talk it through, but it would not be a proper criminal referral.

Q16 Annette Brooke: I shall go all the way through, if that is all right, Chairman. The whole hierarchy.

Chairman: Go through the whole hierarchy, but don't call every witness for every one.

Annette Brooke: Just talk us through quite quickly.

Amanda Brown: Generally, after that there will be a question of whether or not the police are involved, whether or not social services or any other agency are involved and how it is dealt with at the school. The criminal investigation usually takes priority and will be considered first. The teacher will have been considered for suspension; I hope we will have the opportunity to talk to you about what happens in suspension, because that is critical for the individual. Some of what happens at the moment is not in accordance with good practice, and is not even in accordance with what is currently set out. An improvement to the guidance is currently planned, which is better, but suspension is certainly one of the real issues. If a teacher is suspended, they may be called to a police station. As you will have seen in evidence that has already been submitted, attendance at a police station will usually be voluntary, although there is then an issue about whether the teacher will be arrested at that stage. Our view is that that should not be the case. The

17 June 2009 Michael Barnes, Amanda Brown, Paul Kaufman, Chris Keates and Julian Stanley

criminal investigation will continue and witnesses will give statements that will be kept, which leads to another issue about whether those statements are then given to a later investigation at the school or, before that, at the social services'. If there is a school investigation, which is where we at the unions are usually most involved apart from the general support that we give to our member, a new tendency is for the investigation to be subcontracted to an external body much more frequently. We feel that such cases should be dealt with in-house, as there are experienced people on child protection matters within children's services and local authorities. I think that the subcontracting of cases to children's charities or other agencies that have an interest in child protection is a response to the heightened concern and fear in view of the series of tragic, terrible situations that have happened in child protection. Again, that raises the fears and heightens the tensions around the whole issue, so that, in our experience, our members very much feel, when they are put in front of an investigator, bullied by the way in which they are treated by such investigations. As others have said, the process of suspension can take a very long time. There is a criminal investigation, and there may be another social services investigation that can, in some cases, involve the teacher and their own children, so it may have an impact on their own family life because social services have concerns about their attitude towards, and behaviour with, pupils at school. We have had a member who had to sign a form stating that he would have no sole contact with his baby daughter for a year. He was not allowed to change her, be with her or feed her if the mother was not present. That was because of an allegation made at school, so there are considerable concerns about that and its impact on family life as well. Finally, there will be a further investigation, namely the school disciplinary investigation, following which the teacher will be able to return to school if, as we hope, they are cleared. But again, as people have said, there is a real issue about rehabilitation at school. There are also concerns about people knowing that something happened and that somebody was away from school for a long period, but not knowing what has really happened, and voicing concerns such as, "Is there ever smoke without fire?" I think that that affects all teachers, but it particularly affects small schools in rural areas where the school is so much part of the local community that a teacher will almost be hiding behind their front door if they are suspended. If somebody sees them on the street, they will know that something has gone wrong at school.

Q17 Annette Brooke: Thank you very much for that. I am sorry that I made you speak for so long, but that was really helpful and you made some important points along the line. Following on from that, I would like to ask a question to the other members of the panel. There is potential for umpteen different investigations; is there any way of streamlining the investigation process so that the teacher is not faced with quite so many

investigations? They could even end up being investigated by the new Independent Safeguarding Authority at the end of the day.

Chris Keates: The key part of the process is what happens during the initial stages and the decisions that are made at that point. That is the area in which we did the deep review of the 12 cases with the Department for Children, Schools and Families. We did the analysis, and all the issues that arise around those cases hinge on how well and quickly they are handled at the initial stages. Quite often, if those stages were more thorough and consistent, some of the cases would not move on to a later stage where they are found not to have the substance that would take them, for example, to a court. From our point of view, each of those organisations that Amanda has mentioned has a role to play in certain aspects of the issue. What tends to happen is that if there has been a very messy start to the process—if it has been long drawn out, if there has been an inappropriate referral—that is when you start to get people becoming involved at the wrong level. Also, if parents, or whoever is making the allegation, have gone to external sources first—such as the police or social services—then you are actually not starting on a progressive process; you are starting in the middle of a process and everybody is already involved at a high level before you have had that initial investigation.

Julian Stanley: From a mental health point of view, one of our counsellors said it is a bit like having a driving accident: the longer it takes to get to the point where you are back at the wheel, the harder it is to get back. The whole thing about the start of the process is about providing some kind of support system, and that is what we aim to do. It is about people being robust enough to be able to engage in the process as it starts and to query and question. A number of people have raised the issue of training and the level of training that is available for head teachers and support and so on—training local authorities has been referred to. It is about taking the right action at the very beginning of the process and not knee-jerk reactions.

Q18 Annette Brooke: May I come in on a related point? Is the current guidance from the DCSF satisfactory, or does it need changing? Or if it is okay, is it just a matter of training everybody and making sure that it works properly in practice? In the first instance, do you think the guidance needs amending?

Julian Stanley: It certainly seems as though the process takes longer than the guidance actually sets out; that is the critical thing. It is taking much longer than is already in the DCSF information. As has been pointed out by Chris—the unions are very good on this and it would be important to work with them on this—it is really important to strengthen the guidance in a more detailed process so that a more analytical approach is taken at the very beginning.

Chris Keates: In our written evidence we put in a series of key points where we think the guidance needs strengthening. There is no doubt that this current guidance is an improvement on what has

happened in the past, but first of all it is non-statutory and secondly, there are areas that do need to be strengthened. But also, it is not just guidance; there must be support and training. Training is critical for governors, local authority people and head teachers right across the piece. That is missing at the moment.

Q19 Chairman: Shouldn't there be a simple little guide for every head teacher as to what to do in a case of this kind?

Amanda Brown: There used to be a simple—well, fairly simple—guide, certainly a shorter document, which was an agreement between all teaching unions and local authorities as to what head teachers should actually do if somebody comes into the office and says, “We have a child abuse problem”.

Q20 Chairman: That doesn't exist any longer?

Amanda Brown: It does exist, but there are so many different documents and so many layers of different documents: you have national guidance, you have local authority guidance, you may have clusters of local authorities with different guidance, and then you will have maybe a school-level child protection scheme and policy. It would be very useful if there was one place—a guide that a head teacher can pull off the shelf immediately if there is a problem.

Q21 Annette Brooke: Obviously there are a lot of players in this. You have explained to us how complicated it is if the parent goes to the police, but is there a case for clarifying who has the lead role when it is clearly—let us say—a serious child protection issue? Should it not now be the local safeguarding board that takes it on? I say that because, while we are referring to local authorities, that is probably fairly straightforward with maintained schools, but a foundation school or an independent school might not necessarily accept the same leadership from the local authority. I just wonder who should really be getting a grip on a case locally, having the lead role and making sure that everything follows through properly on a complaint that is clearly serious has to be fully investigated.

Amanda Brown: First, local authorities do have the responsibility for child protection within their whole area, even if the school is an independent school. Although that does not always happen—again this is an issue of the disparity between what should happen and what does happen—they do have the technical responsibility for it. Local safeguarding boards have a very important role to play to ensure that everybody is doing their own part of that process. There are different agencies with different roles in the process, so the local safeguarding board can check that everybody is doing what they are supposed to be doing, rather than doing the work itself. Because there are those different procedures, it is right for the police and the social services to take their responsibility. We would like to see the school, perhaps with the local authority, given a little more scope at head teacher level to undertake its role, without the matter necessarily leaving the school. Obviously, there are contractual disciplinary issues

that need to be taken into account. Every teacher in a maintained school will have a contract of employment with a local authority, so the disciplinary process will be within that context. They clearly have to keep that role, but you are right to say that the local safeguarding board should have an oversight of everything as it happens.

Michael Barnes: It is not an issue of leadership, but one of competence. The real problem is that, when it comes down to a formal investigation by an employer, the investigative officers are not well placed or well trained to carry out an independent investigation. There are lots of reasons for that, one of which is that in a sense, the process has already been hijacked—I think you will understand what I mean by that. First, in many cases, there is likely to be a police investigation, and obviously that has to take priority. Secondly, there is likely to be a child protection investigation, and that will invariably start with a strategy meeting. At that meeting, guilt is very often attributed, even though not all the evidence is available and the person may not even know what they are accused of. The die is cast from that point. Employers need the confidence to obtain complete, independent scrutiny of all the facts and to act independently, regardless of previous inputs.

Q22 Mr Chaytor: Let us pursue the question of independent investigators. Where do they come from? What sorts of people are appointed as independent investigators? Is it the case that they have only 10 days to carry out the investigation before reporting to the employer?

Michael Barnes: The answer to that is no. Arrangements vary across the country, and that is part of the difficulty. An independent investigator might be appointed simply because the case involves the line manager, head teacher or whatever. As has been suggested, a case might be farmed out to an independent agency, child protection group or body of that sort. What is clear is that there is a great deal of confusion about the specific role of the independent investigator. I will give one illustration. In order for someone to demonstrate that they are an independent investigator, they are required to look at all the evidence that supports the allegation, alongside all the evidence that runs contrary to it. In my experience, it is rare for that second phase to actually take place. The train of thought is to look at evidence in order to find fault, which is grossly unjust.

Q23 Mr Chaytor: What could be done to strengthen the nature of the investigation or the capacity of the investigators?

Michael Barnes: We need to reassert the independence of that role. That is the first thing. There needs to be a specific code of practice that relates to investigative practice. Many people only deal with this a few times in their career. They learn as they go along and often, although not always, fundamental mistakes are made. Such mistakes are very difficult to recover from, so there needs to be an independent code of practice. There also needs to be wider recognition that on occasion, false,

17 June 2009 Michael Barnes, Amanda Brown, Paul Kaufman, Chris Keates and Julian Stanley

unsubstantiated or misleading allegations—whatever you want to call them—will occur. If we can accept both of those things, and admit in the same sentence that both false and true allegations are made—and if professionals can do the same—we will get a shift towards a more balanced view of the whole issue.

Q24 Mr Chaytor: To pursue that point, perhaps I could ask Paul the question about anonymity, which can be quite controversial. Is it realistic to argue the case for anonymity up to the point of conviction, rather than the point of charging? Is it realistic, feasible or practical to do so?

Paul Kaufman: Some participants in the court process are entitled to anonymity as matters stand. Teachers are not entitled to it, but it is something that can be practically achieved; it has been achieved in other areas.

Q25 Mr Chaytor: What is the difference with teachers?

Paul Kaufman: I support teachers being granted anonymity. As I said, complainants in, for example, rape cases are entitled to anonymity. There is no practical obstacle to ensuring anonymity throughout a judicial process.

Q26 Mr Chaytor: Picking up the point that was made earlier about the rumour mill going into overdrive shortly after an incident—was it Julian's point? Isn't that in conflict with Paul said about the practical possibilities of achieving anonymity?

Julian Stanley: Anonymity is something people would desire. Whether it is possible to achieve, given the nature of schools, is potentially more difficult, but does that not again come back to how the matter is handled at the beginning of the process, and how it is being established? In a sense, from a lot of things that we heard today from unions, Teacher Support Network, and the experience of councillors, teachers and the people who have been through the process, to whom I have spoken, we know that things escalate quickly. What we are arguing for is almost a kind of calming-down process to be instilled in the police, with the powers that they have, and in training for head teachers and local authorities, to be able to investigate more thoroughly and appropriately at the beginning to avoid it getting out of hand. I agree, however, that once an investigation started, it would be difficult to maintain anonymity in a school environment, where things spread quite quickly.

Chris Keates: There are two aspects, David, to the question you raised. A suspension, with someone being out of school, won't stop that rumour mill, and neither will anonymity. Anonymity was a big issue for us when investigations were taking months, and in some cases even years, before anything was done. The work that the DCSF did on the cases that we provided to them showed that the longer the investigation took, the more likely the case was to get into the media arena. Since investigations have been tightened up in the beginning, fewer cases have been exposed in the media, but that danger remains.

Anonymity, from our point of view, is always about media exposure, which is a problem if there is a rumour mill in schools. Once you have been in the local press, you don't stand a chance, whatever the outcome is. That is the first aspect—anonymity. However, most teachers say to us, and our evidence shows, that the biggest issue now for teachers is the soft information—how it is recorded and passed on in CRB checks. That is now blighting careers, whatever happens.

Chairman: Chris, there is a section on that next, so don't go there because we are dealing with it.

Q27 Mr Chaytor: You brought up the issue of suspension. The guidance says that suspension should be considered where there is concern that a child is at risk of significant harm. Is that threshold always applied, or is suspension used too easily in cases where there are no grounds for leaving the principle behind?

Chris Keates: Our view is that it is used too easily, particularly if you go back to the point that was made earlier. In those cases, we are talking about perhaps one incident of physical abuse, not about serious cases of potential sexual abuse. From working with our members, our evidence is that the outcome is still the same even though there might now be a greater period of reflection rather than a knee-jerk reaction. It is only recently—we have had two cases involving two local authorities—that not only has there been a suspension from the school, but there has been an attempt to ban those people from using public services, such as swimming pools, libraries and so on, because they were suspended from school. That is clearly an outrageous reaction, which undermines the idea of people being innocent until proven guilty. Fortunately, we have only had those two cases. I hope that practice does not spread. In law, suspension is a neutral act, but it is not viewed as that by either anybody who knows somebody who has been suspended, or the person who is subject to the suspension. The longer the suspension, the greater the effect it has on health, well-being, family life and potential to return to their career, whatever the outcome of the investigation.

Amanda Brown: I agree with all of that completely. On top of that, the current guidance is that while someone is suspended, they should be told who they can contact at the school, who their contact person at the local authority is, how they are expected to deal with the fact that they may well bump into either pupils or colleagues from school and how that should be worked. They are supposed to be supported through that and given advice on any other counselling they may require by their employer. That does not happen. Often, they are told they can have absolutely no contact with anyone at the school and must not speak to their friends. We have teachers who are married to other staff members who are told they cannot have any contact with people from the school. Obviously, that is completely ludicrous. There will also be teachers with children at the school. Those are clear examples of how ridiculous that is, but it is also ridiculous that somebody who has been suspended for a particular

issue should be told “You must have no contact.” The impact on their mental health and feelings is that they have been isolated from everybody, they are considered a complete danger and must not be allowed out. When we are talking about allegations of which 95% are false, that is a significant impact on their mental health state and it is very unfair. That is partly to do with what is in the policies and procedures, but it is also to do with people not understanding how the process should be implemented.

Julian Stanley: I spoke to a teacher and a head teacher who had been through these processes recently. They mirrored the comments from those who have called the Teacher Support Network during these processes. What they all talked about was the fact that during suspension they were not allowed to consider alternative types of work. Some of them had worked in schools where theoretically, they could have gone into local authorities and advised on policy, done other kinds of work, or been given things to do at home. That would have enabled them to have a sense that they were not guilty at the start, they were still going through a process and they were still professionals who might return to work. What should happen if you are suspended is critical, because, as stated, it is meant to be a neutral act. It is not viewed that way. To get back into work afterwards is particularly difficult. We would like to see the guidance improved by referring people on—not only to their unions, but for emotional support. You do have to work through a complex set of feelings and deal with your local communities, as well as the ramifications of being taken out of the school environment.

Q28 Mr Timpson: May I return to the issue we touched on briefly at the start, about the recording of allegations? We have received written evidence that falls on both sides of the argument as to whether all allegations—unsubstantiated or not—should be recorded. You heard earlier from the Chair that the NSPCC takes the view that all allegations should be recorded, regardless of whether they have been proved or not, whereas the NGA takes the view that if an allegation has not been proved or is false, that should be the end of the matter. There is a wider debate about databases and what should be recorded, but in terms of information that is recorded about allegations—is there a justification for unsubstantiated allegations to be recorded and if so, why? Secondly, while you are thinking about that, if recordings of allegations are to be deleted, who should make that decision and at what stage of the process should that happen?

Chris Keates: Particularly in the current climate in which we all work, and thinking about how issues work generally and how things are investigated under normal disciplinary procedures, you might have a disciplinary procedure, go through the process and find there was no case to answer. You would still have a record of that disciplinary procedure. It is difficult to argue that you would have no record at all. More important from NASUWT’s point of view, is how these issues are recorded and,

subsequently, how that information is used—when it is passed on, when it is not appropriate to pass it on and who is making that decision. A lot of work needs to be done on consistency of reporting in the various authorities—particularly in police authorities. In our evidence, we find the police are reluctant to say, “There is no case to answer.” They will say, “There is not enough evidence to proceed,” but that is actually much more pejorative in terms of being passed on than recording there is no case to answer. The Home Office has done a lot of work on this, but at the moment it is down to the discretion of police authorities, although there is guidance across all police authorities. We think the key is how something is recorded, how the investigation is put out, and what the outcome is.¹ There must be consistency about these recordings at school level, local authority level, in police authorities and in social services and—very important—about what then gets passed on for CRB checks. The climate in schools at the moment is such that if your enhanced disclosure does not come back completely clear, people won’t take the risk of appointing you. If you are a teacher who has had an allegation made against you and you have been exonerated, that information is passed on, and your career will still be blighted. The focus should not be on whether information should be recorded, but how it is recorded and how and what is passed on.

Amanda Brown: May I add to that? The Committee has a real opportunity now to deal with that problem. We have not talked so much about the reference material—the DCSF guidance on what should be passed on in references. There are two issues. One is about what should be passed on in references to new employers, and that comes direct from school, which again is about what information is kept. A real opportunity has been provided by the introduction of the Independent Safeguarding Authority, which has been set up as an independent body to consider whether or not people are safe to work with children. It will look at everything on the police record—conviction and soft information, whether that is the “brown envelope” information that people don’t even know about, or otherwise disclosed soft information. The authority will consider whether or not there is sufficient information to say someone is unsafe. If so, it won’t register them as able to join the work force. We think the missed opportunity is that the time to take away the unfairness is when employers—just at the point where they are deciding whether they are going to appoint someone to a post—see that disclosure and that soft information. They see the information the police have disclosed, because they feel they need to just in case it might be relevant, and it says, “An allegation was made. Insufficient evidence: no further action taken.” That is factually correct. However, it leads everybody to read between the lines that this person is guilty of an offence. If only the Independent Safeguarding Authority sees that, it can say, “Actually, there is nothing here. We will investigate this, find out what the person has to say

¹ *Note by witness:* The key is how something is recorded, what is recorded and what is passed on.

17 June 2009 Michael Barnes, Amanda Brown, Paul Kaufman, Chris Keates and Julian Stanley

about it and decide whether or not we think they are safe.” If they are safe, we say that information should no longer be disclosed to an employer, because it has no relevance, no weight. The only weight it would have, if disclosed, is entirely disproportionate because it allows the head teacher to think, “If I’m choosing between these two people, do I choose the person who has nothing on their disclosure, or the person whose disclosure says, ‘Well, just perhaps’, because an allegation was made?” The Government and Home Office have said that they still want employers to see the full disclosure, despite the Independent Safeguarding Authority’s deciding on barring. Their justification for that is that it is only right that a head teacher should see whether someone has a conviction, such as dangerous driving, if they are going to drive the school minibus, for example. We have absolutely no objection to employers seeing convictions. Our real objection is to the soft, unproven, potentially malicious allegations that have been made. Since that information will, from October, already have been through a process where an independent government body has looked at it and decided someone is safe, we see absolutely no justification for that being passed on to the employer. That is a real change that could happen now, and could really change the position not only for teachers but for everybody who has to be registered with the Independent Safeguarding Authority, which is something like 11 million workers in the UK in the health sector, local government and across the board. That is something that could be done now to completely change the picture.

Q29 Mr Timpson: Does everyone agree with Amanda’s view—correct me, Amanda, if I have got your interpretation wrong—that the ISA should in effect be the final decision makers of what should be on this CRB enhanced check supplementary information, where it is relevant to child protection? If not, how would we ensure that the police’s use of terminology currently on those CRB checks is phrased in a manner that is not loaded in the way that Chris has suggested it is, and as it would appear at face value to be to me too?

Chris Keates: I think that Amanda has identified a potential way of stopping information doing the rounds when there is no substance to it. However, that still does not remove the need for consistency of reporting, because you could still get a problem with the ISA and the information that is going to it. I certainly think the idea is worth exploring, but I still think that the fundamental issue is how things are recorded, what is recorded, who has access to it and where it is passed on. The key area—where we get most problems—is what is kept on police files where there have been investigations.

Q30 Mr Timpson: Is this another area that would need more robust guidance?

Chris Keates: We have been campaigning for this for a long time. *[Interruption.]* Sorry, we are so passionate about this particular issue. How this information is recorded and what gets passed on by the police is absolutely critical.

Julian Stanley: I think that it is worthy of much further investigation. As Chris and Amanda correctly said, there is the whole business of who records what and what is finally decided. Consistency is all. A lot of teachers who talk to the support lines that we operate talk about the fact that they want to know what is going to be on their records and they want to be able to have some input into that process if they have been found to be innocent, because that is critical for their future career.

Amanda Brown: That is a really important point, because quite often we have had members who have not actually appreciated what is on their record. We now have to advise people—in fact, we have to think about whether we advise them—that if they are thinking of changing from one post to another, they should think about seeking information from the police, using a data subject access request, to ask what is on their record first. That is because sometimes people won’t know that it has been reported that an investigation has been carried out. They have not even appreciated that, because it has been dealt with at such a low level in school, but it has still been reported.

Julian Stanley: I heard of a particular case where the police recorded stuff but people did not find out until much, much later when they applied for a new job. That was over something that was not significant in relation to their ability to carry out the work, which raises a big concern. We are all in agreement that we need some kind of criminal record checking, but there is this business of the lack of transparency about what is recorded by the police.

Amanda Brown: We had a case where someone—

Chairman: Amanda, you must be brief, as Paul has been waiting.

Amanda Brown: I’m sorry. The person was unable to get another job as a teacher. However, he was accepted in the Metropolitan police. That is the effect of having that information disclosed; you cannot work as a teacher, but you can get a job in the police.

Q31 Chairman: The report goes back to the chief constable in each area, doesn’t it?

Paul Kaufman: Yes. I wanted to identify the practical problem that has been touched on, which is that the teacher won’t know what is on the CRB report, perhaps until they apply for another post, which might not be until, say, 10 years after the investigation. By that time, the solicitor’s file is likely to have been destroyed—you only have to retain such a file for seven years—and the court transcript may also have been destroyed. So, in those circumstances, it is extremely difficult for a teacher who has faced a serious allegation to exonerate themselves.

Chairman: We are biting into the next session, so please answer very quickly.

17 June 2009 Michael Barnes, Amanda Brown, Paul Kaufman, Chris Keates and Julian Stanley

Michael Barnes: In fairness to the police, they receive police intelligence, they make an assessment of that intelligence and they have a very good system for graduating that intelligence. The problem has occurred because issues that previously would not have appeared on an enhanced CRB now routinely do appear because of the Huntley situation—Soham. It may not be an issue for this Committee, but there needs to be an appeal process against information that is put on to the CRB, because at the present time it is entirely a matter for the chief constable. He has to make a judgment as to whether it is relevant and proportionate. If he believes that it is, he has a legal duty to disclose that information. In fairness to chief constables, as was said recently in the Court of Appeal, this is an issue for Parliament. It requires a change of law for the position to be changed.

Chairman: That is a really good point. Paul, we missed something didn't we?

Q32 Paul Holmes: On powers of arrest, Paul, you submitted some evidence suggesting that the police are too quick to arrest people—for example, if a teacher goes to give a statement voluntarily and is arrested. Do you want to elaborate on that?

Paul Kaufman: The police don't necessarily appreciate the awful situation that a teacher will find themselves in having been the subject of a false allegation. Sometimes, the police simply don't appreciate the impact of arresting someone. It is something they do routinely in relation to other suspects, and they don't differentiate teachers from members of the public generally. Teachers are particularly vulnerable because they are asked on a regular basis to deal, in effect, with policing in schools, where they have to restrain pupils who are increasingly ready to use violence. In addition, some pupils don't believe that they can be touched by a teacher, and therefore assume that a teacher who has physically intervened has committed an offence, so teachers are frequently falsely accused of assault when they have in fact intervened.

Q33 Paul Holmes: Constituents come to me when they have been arrested, perhaps after a neighbour dispute, and feel very aggrieved. They say, "It wasn't me, it was them, so why did they arrest me?" Can you really treat teachers differently to anyone else?

Paul Kaufman: Yes. If the police were arrested every time a member of the public complained that they had been assaulted by a police officer, the police would be up in arms. It is now an occupational

hazard for teachers, who are expected to intervene in difficult situations for health and safety reasons and so on, to be accused of using force by pupils and parents who are under the misapprehension that teachers are not allowed to—

Q34 Paul Holmes: The NASUWT took a case to judicial review, and the police, just before it went to review, backed down and said, "Yes, this was an unlawful arrest." What will happen from there? Has that set a precedent?

Chris Keates: No, it is influential rather than precedential because it didn't get into the High Court. We have taken two successful cases, and yesterday we had another one that we are going to take to review as well, because this is happening so frequently. It is a simple matter of the police being trained to apply the provisions of the Police and Criminal Evidence Act 1984 in relation to teachers and, I would say, generally, in relation to members of the public, although we only know about this in terms of teachers. The provisions are there and are absolutely clear, but they are not being applied. People are going in voluntarily and co-operating, and are then finding themselves being arrested and having their DNA taken. There is a real issue about the training of the police in these circumstances. I don't think it needs new legislation; it needs proper application of existing legislation in relation to teachers and other public servants.

Q35 Paul Holmes: So, you are talking about code G of the 1984 Act, which says that the police must have reasonable grounds to believe that the person's arrest is necessary? Are you saying that they are clearly overstepping that?

Chris Keates: We have won two cases—well, they have settled, as you said—which indicates to me that they recognised that they have breached that and were going to lose if they got to the High Court. As I said, we had another case yesterday with the West Midlands police, so that is two with them. The other case was with the Lanarkshire police.

Chairman: Well, an Assistant Chief Constable will be sitting in your seat in a minute, Chris, so we will ask him. This has been a rapid session and you have been absolutely fantastic. I think we have the information we wanted. We will write this short report up. If you could maintain your contact with the Committee, we hope to make it a good, short, sharp report that will help you to make a difference on the basis of the facts that we have been discovering. Thank you very much.

Memorandum submitted by the Local Government Association (LGA)

INTRODUCTION

The Local Government Association (LGA) represents over 400 local authorities across England and Wales, including all twelve councils which currently have directly-elected mayors. In its role the LGA aims to put councils at the heart of the drive to improve public services and to work with government to ensure that the policy, legislative and financial context in which they operate, supports that objective.

SCALE AND NATURE OF ALLEGATIONS OF IMPROPER CONDUCT MADE AGAINST SCHOOL STAFF

Recent evidence suggests that the rate of allegations against school staff is running at around 2,500 per year. The Department for Children, Schools and Families (DCSF) should be able to provide more accurate information.

Over half the cases involve an accusation of inappropriate physical contact and around 30% of cases relate to sexual behaviour.

High profile cases do, of course, become widely publicised. Information about teachers given sanctions by GTC or “struck off” is in the public domain. The GTC will, of course, be able to provide further information.

SHOULD STAFF REMAIN ANONYMOUS WHILE THE CASE IS INVESTIGATED?

Where possible, staff against whom allegations have been made should remain anonymous. Following the initial consideration of the allegation, almost a quarter of staff involved do not have any further action taken against them. The LGA would not want local authorities’ duty of care to their employees to be compromised through unjustified public disclosure of unfounded allegations.

However, it is inevitable that those interacting within the school on a day-to-day basis—including staff, governors and parents—are often likely to know when an allegation against a member of staff has been made, particularly as this will often (but not always) lead to suspension. As always, a balanced approach will be needed in dealing with allegations.

SHOULD CURRENT GUIDANCE BE REVISED, PARTICULARLY RELATING TO—

- Disciplinary procedures;
- Criteria for determining whether a staff member should be suspended;
- When should a staff member be arrested; and
- Retention of records of false allegations.

Over the last few years, the Department has published a significant amount of guidance, including:

- *Working Together to Safeguard Children (2006)*; and
- *Safeguarding Children and Safer Recruitment in Education (2007)*.

In 2002, the National Employers’ Organisation for School Teachers (NEOST)—the employer representative body in England and Wales relating to conditions of service for teachers working in maintained schools—issued joint guidance with the six teacher trade unions on:

- Staff facing an allegation of abuse—guidelines on practice and procedure; and
- Preventing abuse of trust—guidance for teachers, education staff and volunteers.

NEOST also published employer guidance in 2002 on “conduct” for teachers, education staff and volunteers.

All this guidance deals effectively with most of the issues identified by the Select Committee, although clearly a review of current guidance would be worthwhile to ensure that it continues to be “fit for purpose”.

In this connection, the LGA understands that, following a review of the guidance in 2007, the DCSF has issued a consultation paper on “practice guidance” relating to the handling of allegations of abuse made against adults who work with children and young people. This will provide the opportunity for the Government and stakeholders to develop some further practical advice for employers and aid them in implementing agreed policy objectives.

LGA will be responding to this consultation and will take the opportunity presented by this consultation to assess whether the previous joint advice published by NEOST and the teacher unions referred to above needs to be revised.

In terms of the retention of records of false allegations, the LGA is pleased to note that the DCSF intends to amend the current guidance to make it clear that allegations which have been investigated and demonstrated to be completely untrue do not need to be included in a teacher’s references.

May 2009

Memorandum submitted by The National Governors’ Association (NGA)

1. INTRODUCTION

1.1 The National Governors’ Association (NGA) is the national membership body for school governors. NGA has several categories of membership comprising individual governors, school governing bodies and independent local associations of school governing bodies. NGA seeks to represent the interests of all school governors and governing bodies in all phases and types of school.

2. SUMMARY

2.1 *Nature and scale of allegation against school staff*

The NGA does not collect information about the level and nature of complaints against school staff.

2.2 *Anonymity*

The NGA believes that all staff disciplinary matters should be dealt with on a confidential basis and staff members subject to allegations of misconduct should not have their identities splashed across local press. The NGA is not, however, clear whether such anonymity is achievable.

2.3 *Disciplinary panels*

The NGA believes that further guidance would be helpful to both those conducting investigations and governors sitting on disciplinary panels. The NGA would also support the introduction of independent investigators.

2.4 *Suspension of Staff*

The NGA believes that more thorough guidance should be made available and widely disseminated about the alternatives to suspension.

2.5 *Retention of records*

The NGA believes there is no justification for retaining details on the file of an individual staff member of an allegation which has been shown to be false.

3. WHETHER STAFF SUBJECT TO ALLEGATIONS SHOULD REMAIN ANONYMOUS WHILE THE CASE IS INVESTIGATED

3.1 The guidance for dealing with allegations against school staff produced by the DCSF *Safeguarding Children and Safer Recruitment in Education* states “Every effort must be made to safeguard against unwanted publicity while an allegation is being investigated or considered”.²

3.2 While it is clear that when an allegation is made public it is hugely stressful for the individual concerned, the NGA has no evidence that in most cases matters are not handled with absolute confidentiality.

3.3 The NGA does not take lightly the personal distress caused by the public airing of an allegation and where a case is made public, but the staff member in question is subsequently exonerated, the NGA would be supportive of some form of public statement by either the school or the LA to make the situation clear. This could be in the form of a press release or a letter to parents.

3.4 The protection of children and young people is of vital importance, but it cannot be right that the lives of school staff, often with years of unblemished service, can be destroyed as a result of false allegations.

3.5 The NGA is supportive of the idea of anonymity for school staff, but we have significant doubts about whether this can be achieved in practice. In most workplaces confidentiality is an absolute when dealing with disciplinary matters, but this often doesn't prevent seemingly the entire workforce having knowledge of an “incident” usually by the end of the same day. While this is unfortunate for the individual concerned, the crucial factor is that while such incidents provide fodder for office gossip, they are rarely of interest to those outside the workplace. The situation is very different for school staff, where “allegations” become fodder for playground and parental gossip. School staff, school governors and local authorities can be held to account for any breaches of confidentiality, but this is not the case for pupils and parents. Schools can consider disciplinary action against pupils who spread details of allegations (although the NGA is not aware of any school which has done so), but they have no power to act against parents.

3.6 To provide anonymity for teachers would require legislation and the NGA is not sure how this could be implemented effectively. The NGA is not clear how the name of a member of school staff could be kept out of the public domain if a parent or pupil went to a newspaper.

4. THE PROCEDURES TO BE FOLLOWED BY DISCIPLINARY PANELS

4.1 The NGA believes that further guidance would be extremely helpful in relation to the investigation of an allegation and the conduct of disciplinary panels.

4.2 Where an allegation is against a member of staff then the Headteacher would take the lead. The Chair of Governors should be informed about any allegation and may be involved in discussions about the process going forward, this would certainly be the case if the allegation were about the headteacher.

4.3 The governing body, whatever the individual expertise of its members, are not the “professionals” in this context and the NGA does not believe that it is appropriate for any member of the governing body to be involved in the formal investigative process. The chair of governors should be kept informed about the

² DCSF *Safeguarding Children and Safer Recruitment in Education* Chapter 5, paragraph 5.7.

progress of investigations, but should not be directly involved in the taking of evidence. Other members of the governing body would become involved if disciplinary matters are delegated to the GB, or where the staff member appeals against any decision made by the headteacher.

4.4 The governing body is guided by and to a large extent reliant on the advice it receives from the professionals in the process (principally the headteacher and local authority). Anecdotal evidence given to the NGA, which appears to be supported by the cases described in the recent File on Four³ programme, suggests that the quality of advice given to governing bodies is variable. Having said that, where the governing body is required to set up a disciplinary panel it must ensure that it gives equal weight to all the evidence presented. The governing body has a duty of care to all the members of staff in its school and this requires it to ensure that any disciplinary hearing is fair. In line with the NGA's policy of the importance of training for governing bodies we believe that governors sitting on disciplinary panels should receive appropriate training. The NGA believes that it would be helpful for LAs to establish a bank of appropriately trained clerks, in each local authority, who would be available to clerk such meetings. This would ensure that all such panels are clerked by properly trained individuals able to give appropriate advice as to procedure.

4.5 The governing body must ensure that its policy for dealing with allegations sets clear lines of responsibility to ensure that no individual may investigate an allegation in which they are also a witness.

4.6 There is a difference between demonstrably false allegations and those which are subject to interpretation—ie an allegation in which can rapidly be shown to be untrue (eg the member in staff in question was not on the school premises on the day of the alleged incident) and allegations which are based on different interpretations of the same incident (eg when a staff member removes a pupil from classroom with what s/he deems to be appropriate force but which the pupil claims is excessive force). These latter cases are more difficult to resolve and are often the ones which lead to lengthy suspensions and subsequent Employment Tribunals. It would be helpful if guidance could be provided about the role of the investigating officer and the ways in which evidence should be collected and interpreted.

4.7 The NGA believes that it would be more appropriate for any investigation to be carried out by a properly trained person who is independent of the school, and preferably of the LA; although we recognise that this latter provision may have significant cost implications. The NGA does not believe that the headteacher, who will have worked in some capacity with the staff member and will also have direct knowledge of the pupil, should be placed in a position of having to investigate when an allegation is made. It is in the interests of all concerned that investigations are carried out in a transparent manner and are seen to be fair.

4.8 It is clear from the cases reported in the recent File on Four programme and other cases highlighted over recent years by all the teaching unions, that time is a major factor in all of these cases. While LAs, headteachers and governing bodies cannot control the length of time any criminal investigation takes, they are directly responsible for disciplinary proceedings. Where a criminal investigation has already taken place it cannot be right for internal disciplinary proceedings to drag on for months. While there may be grounds for internal disciplinary action if criminal proceedings do not take place, or even if a trial has found an individual not guilty of a criminal offence; the facts of the case are already known and there can be little justification for further lengthy investigations.

4.9 The NGA would support more thorough guidance about what issues should be considered where a criminal investigation has already taken place and either no prosecution has taken place or the individual concerned has been found not guilty. The guidance should address the issue of whether any further investigation is required and the need to resolve matters quickly.

4.10 Lengthy investigations are not just traumatic for the staff involved they also cause operational and financial difficulties for the school and can impact on pupils.

5. WHEN SUSPENSION OF THE STAFF MEMBER CONCERNED IS APPROPRIATE

5.1 The Safeguarding guidance makes clear that suspension should not be automatic in all cases and alternative courses of action should be considered.

5.2 Suspension is deemed to be a “neutral act” which does not in any way indicate guilt, but in reality can be extremely traumatic for the individual involved and without appropriate re-integration policies can be career threatening even if the allegation is deemed to be unfounded. Suspension can also impact upon anonymity as the disappearance of an individual member of staff from the school population can lead to rumours, and such rumours could be damaging to the individual's reputation.

5.3 The NGA does not have hard facts and figures, but anecdotal evidence does suggest that suspension is often an automatic reaction, rather than a considered judgement on the merits of the evidence. The NGA does know of a situation in which a Chair of Governors was phoned by the police and told that the headteacher would need to be suspended—this before any details of the allegation had been given. This is wholly inappropriate as only the Chair of Governors can make a decision about whether to suspend the headteacher, and guidance should indicate that this would only happen in consultation with the LA.

³ File on Four, *BBC Radio 4* (Broadcast 3 March 2009)—programme transcript can be viewed via the attached link http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/03_03_09_fo4_abuse.pdf

5.4 All those involved in dealing with allegations need to have clear guidance about when suspension is appropriate and what other courses of action are open to them. Guidance should also make clear who is responsible for making decisions about suspension as in the NGA's experience other agencies involved in these situations sometimes have little understanding of the role of the governing body.

6. THE RETENTION OF RECORDS OF ALLEGATIONS FOUND TO BE FALSE

6.1 If an allegation is found to be false it has been demonstrated that it could not have taken place and the member of staff is wholly exonerated. There can be no justification for such an allegation remaining on a member of staff's individual file or being disclosed. The school should keep a record that an allegation has been made by a particular pupil because as in some of the reported cases it has been shown that unfortunately some pupils make false allegations on one or more occasion.

May 2009

Memorandum submitted by the Association of School and College Leaders

1. The Association of School and College Leaders (ASCL) represents nearly 15,000 members of the leadership teams of maintained and independent schools and colleges throughout the UK. This places the association in a unique position to see this initiative from the viewpoint of the leaders of both secondary schools and colleges.

2. ASCL welcomes the Committee's inquiry into allegations against school staff, which the association has for some time felt to be being handled in an unsatisfactory manner.

3. ASCL has not conducted any survey of the number or nature of such allegations, but it is clear from calls to our hotline that in aggregate such allegations are frequent. They are very rare in some schools and rather common in others, depending not on how much staff misbehave but on the attitude of the children and their parents to discipline.

4. School leaders contact ASCL for advice sometimes in relation to allegations made against themselves but in nearly all cases seeking advice about how to handle allegations made against staff who work for them.

5. Most such allegations are not sexual but relate to physical violence ("he hit me" or "she pushed me"). The great majority of these appear to have no basis in fact or to be greatly exaggerated. The former include allegations made in malice or as a way of distracting from or defending against being disciplined. The latter usually follow from accidental contact or teachers using the power to physically restrain pupils likely to harm themselves or others being mistaken for or wilfully interpreted as an assault.

6. On the other hand child protection experts say that sexual abuse cases, though rarer, are under-reported and after many years of denial there has been a strong case made in recent years to tilt the balance in favour of the child. ASCL agrees; when such allegations are made it is imperative that the child be supported and heard, and that there is a thorough and effective investigation.

7. One of the systemic problems at present is a failure to distinguish at an early stage between these types of allegations, and between allegations of greater or lesser seriousness. This can lead to over-reaction.

8. All such allegations can be devastating, and having to face them, without them ever being proven, has driven good teachers and other staff out of their employment and out of the profession. This is exaggerated by public suspicion that tends to attach to any person against whom such an allegation is made even when there is absolutely no basis for it.

9. It is not unknown for children or their parents to threaten school staff that they will make an allegation (unless disciplinary action is dropped for example). This undermines the authority of school staff and good order in (some) schools.

10. ASCL is strongly of the opinion that school staff should be protected from being identified as the object of an allegation in the press or in other public places such as the Internet, remaining anonymous unless and until they are convicted of an offence. That is not to say that there should not be a record of allegations made, see paragraph 17 below, but such records should remain private if the case is not proven.

11. The operation of school disciplinary panels is generally satisfactory, though of course there are some failures to adopt and follow fair procedures.

12. It is felt that investigations by school staff who have not been trained in handling sexual abuse cases can lead to tainted evidence in this most serious area. ASCL agrees, and strongly advises its members not to involve themselves in such cases at all, but to hand them over to experts.

13. However, the more general injunction on school leaders not to investigate child protection cases at all, but to hand matters to the LA team or the police, can lead to over-reaction when it is clear that there is no case to answer or when the allegation is less serious.

14. There is a need to make it clear that suspension is not needed in the great majority of cases. It is resorted to far too frequently at present, and though a nominally neutral act is seen by many suspended staff and onlookers as a punishment and an indication of guilt. It also isolates accused staff and separates them

from many of their normal support systems at a difficult and stressful time. It is only needed if there are reasons to believe that the presence of the accused member of staff might significantly affect the investigation or create a significant chance of (further) harm.

15. Particularly when members of staff have been suspended there is a need to complete investigations much more quickly. Police and LA child protection teams can sometimes take months to investigate even straightforward cases. This can be very stressful for those accused, even when they know they are innocent; and when they have been suspended for a lengthy period it can be difficult or impossible for them to return to work.

16. There are far too many arrests. There should be no need to arrest a member of staff who is willing to cooperate with the police, yet arrests are made even of people who have presented themselves at a police station to make a statement. It is very distressing for law-abiding people who have done nothing wrong to find that there will then be a permanent record of their arrest. This is compounded by the collection of fingerprints and DNA samples, which again may be held indefinitely. The processing of an arrested person is not necessarily private, and when school staff meet their pupils in such a context, as has been known to happen, it is humiliating and undermining of school discipline. Arrest should only be necessary if the person is refusing to accompany a police officer, or if they are to be charged with a serious offence and held in custody.

17. The Soham case militates against any systematic deletion of records of unproven allegations. However, such records can be damaging and distressing to innocent school staff, even when the allegation made against them was mistaken, unfounded, or malicious. At the very least greater care should be taken when such records are accessed to present the outcome of the investigation with as much prominence as the fact of the allegation. References should not mention allegations that have been found to be mistaken, unfounded or malicious.

18. Malicious allegations are not uncommon, but there seems to be a reluctance to act against those making them. It is important for the maintenance of good order in schools that staff should be able to discipline children who break the rules. At present that can be subverted by the mis-use of a system intended to protect children to enable errant children or their parents effectively to punish school staff by making unfounded allegations, and with no consequences to themselves.

19. The present inquiry is into allegations against school staff, but it is worth noting that many of the same points apply to staff who work in colleges and in other situations where they have responsibility for children and young people under the age of 18.

SUMMARY

20. School staff should have anonymity when allegations are made against them unless and until they are convicted of an offence.

21. There is a need for a more proportionate response to minor allegations.

22. Suspension should be used only when there is a clear need for it.

23. Investigations should take place within an agreed timescale. It is especially important for this to be adhered to in cases where a member of staff has been suspended.

24. Arrests should not be made unless the person is refusing to cooperate with the police or is to be charged with a serious offence and held in custody.

25. Further thought should be given to how “soft” evidence is retained and accessed, and greater effort made to prevent such activity affecting the careers of innocent people.

26. There should be a greater emphasis on the consequences of making a malicious or frivolous allegation.

27. ASCL hopes that this is of value to your inquiry, and is willing to be further consulted and to assist in any way that it can.

May 2009

Memorandum submitted by the National Association of Head Teachers

INTRODUCTION

1. The National Association welcomes the opportunity to give evidence to the Committee on such an important topic as this and commends the Committee for its desire to investigate the areas highlighted in the inquiry's remit. The Association is well-placed to present evidence, given that it has over 28,500 members who are currently leaders in educational institutions covering all phases and age ranges 0–19. Indeed, with our membership including Principals of Further Education Colleges, this age range could be considered to cover cradle to grave!

2. The Association has long been concerned about the whole area of allegations against school staff. At its conference in 2007, a report was presented which highlighted the issues of false and malicious allegations and the impact that these can have on the lives of the professionals involved. It is not too extreme to say the consequences of any allegation can be tragic. A copy of the report is attached to this submission.⁴

SCALE AND NATURE OF ALLEGATIONS

3. Society itself is alleged to be increasing in its litigious nature and this cannot fail to have an effect on schools and the communities that they serve. This can manifest itself in an increase in allegations made against school staff. These can vary from minor incidents to very serious issues but all result in huge stress for those accused.

4. Although many schools deal well with these matters, it is still the case that they can take a considerable time to resolve. During this time, the accused person faces potential cataclysmic events, as far as they are concerned. This puts incredible levels of stress on their personal and professional lives.

5. It is also true that the expectation, with regard to the outcome of an allegation, of those making the allegation appears to be changing. Anticipated sanctions are extreme, with a real sense of demanding retribution to a high degree. There appears to be an element of 'lynch mob' which is becoming prevalent in a small number of cases.

ANONYMITY

6. It is absolutely essential that anonymity is maintained while the allegation is being investigated. Sadly, the Association has had members whose lives have been ruined by media coverage in the local community whilst an investigation into an allegation is conducted. This can lead to suicide attempts and, in a small number of cases, actual suicides. For the school leader who is at the centre of a local community to face an allegation is devastating; for this to be compounded by adverse but unfounded and often ill-informed local media coverage can be one step too far.

7. The problem relating to what should and should not be retained on records following an allegation needs to be addressed. Currently, there is inconsistent practice nationally which can result in unfair treatment for some accused.

EXISTING GUIDANCE

8. Whilst the existing guidance could be considered as adequate, "adequate" is not enough when dealing with such important issues. It needs to be outstanding, insofar as this is possible, covering all eventualities so that staff are dealt with appropriately.

9. It is essential that the guidance deals in detail with all eventualities. It is often difficult for trained practitioners to work through the sensitive issues which arise through such allegations; for governors, who face these matters infrequently, it can be daunting and confusing. Guidance needs to be explicit and clear, allowing relatively inexperienced people to work their way through the process without undue delay but with fairness and appropriately.

10. An example of where further detail is needed is deciding whether suspension is an appropriate strategy. There are many factors that should be considered when weighing up the need to suspend or not. Although it is allegedly a neutral act, suspension can have a dramatic detrimental effect on careers of professionals. The Association deals on a regular basis with members who have been suspended as the result of spurious allegations. These allegations have elicited a 'knee-jerk' reaction from those charged with handling the issue, solely through the fear generated from their own lack of experience and/or skills.

11. We have recently dealt with a case where a head member prevented an autistic child, aged 10, from throwing himself out of a window after being prevented from running away from school. The parents complained that the head had hurt the child and, without any investigation as to what had happened, the head was suspended from her post. The CPS took an inordinate length of time (four months) to throw the case out. However, this was not the end of the matter for the member. Instead, the local authority decided to go through a disciplinary process WITHOUT carrying out an investigation first. Eventually, after a suspension lasting six months, the disciplinary process was completed and the head was exonerated. In the meantime, the parents have complained about the governing body and the local authority and are threatening to seek an injunction to prevent the head from returning to school. Although the suspension has been lifted, the head has still not returned to work, her career has been damaged, possibly irrevocably, and all because of a badly handled allegation which had no foundation.

12. The head herself expressed her feelings graphically in her own statement: Even if a successful agreement is reached whereby I could have a safe return to work I have still been placed in an almost impossible and immensely stressful situation position where my professional reputation amongst other parents and colleagues is in tatters, the bonds of trust have been broken, compounded by the failure of the complainant parents . . . to keep the matter confidential, and I will have an allegation remaining on my record and with CRB even though it has been completely dismissed.

⁴ Not printed.

13. There are many alternative strategies that could be used which would avoid unnecessary suspensions and these should be set out clearly in guidance so that those who need to deal with these difficult decisions do so with the best possible knowledge and information available to them.

CONCLUSION

14. There is a considerable amount of work that still needs to be done with regard to the guidance provided to those who are faced with dealing with these difficult issues. This would provide a good basis for the allegations to be dealt with fairly, which would include maintaining the anonymity of those accused. It is also essential that all such allegations are dealt with expeditiously to ensure that those involved suffer as little anguish and career damage as possible.

15. The Association would appreciate the opportunity to expand on the issues outlined in this submission and would be happy to provide further examples of people who have faced traumatic events because of allegations levelled against them.

May 2009

Memorandum submitted by The General Teaching Council for England (GTCE)

EXECUTIVE SUMMARY

- The General Teaching Council for England (GTCE) is aware of the very considerable distress associated with the processes for dealing with allegations against school staff.
- The GTCE receives a small number of complaints about teachers directly from the public but these are rarely at a threshold serious enough to raise doubts about the teacher's registration status and thus to require a hearing. To date, only three such referrals have resulted in a sanction.
- The GTCE does not consider complaints or referrals that raise child protection issues. These are dealt with by the Independent Safeguarding Authority (ISA).
- The GTCE believes that referral and investigation procedures are not universally well understood. Local authorities and personnel providers should provide more high quality training and support in this area.
- The GTCE does not believe that the public interest requires the teacher or other staff member to be named at the point the allegation is made.

INTRODUCTION

1. The General Teaching Council for England (GTCE) is the professional and regulatory body for teachers teaching in maintained schools, maintained and non-maintained special schools and pupil referral units in England. Under the Teaching and Higher Education Act 1998, we have a responsibility for regulating the professional behaviour of registered teachers in England and may consider cases referred to us for reasons of misconduct, incompetence or criminal offending.

2. Teacher employers, whether local authorities, individual schools with legal employer status or supply teaching agencies, are required to refer a case to us where a teacher is dismissed for a reason relating to misconduct, incompetence or criminal offending or where they resign in circumstances where dismissal was possible.

3. Members of the public may also refer complaints of misconduct (but not of incompetence) directly to the GTCE. We have powers to investigate and hold public hearings and may issue a reprimand, apply conditions to continuing registration, suspend registration or prohibit from teaching, with or without the option to reapply for registration. Sanctions are recorded on the Register, which is available through online checking by employers. Members of the public may also check whether a teacher is registered. The GTCE does not consider cases where the teacher may represent a risk of harm to children, which is a matter for the Independent Safeguarding Authority (ISA).

THE SCALE AND NATURE OF ALLEGATIONS OF IMPROPER CONDUCT MADE AGAINST SCHOOL STAFF

4. Allegations against school staff may be made by a range of parties and cover a wide range of issues. Schools are required to have complaints procedures in place whereby parents and others who are dissatisfied by a matter relating to the school may make complaint. The GTCE believe the normal expectation is that complainants about an individual teacher should initially raise the matter with the head teacher and thereafter, if not satisfied, with the governing body. Where the school is under local authority control, the local authority may also be approached but we understand that its role is confined to reviewing the adequacy and of the procedures followed in considering the complaint rather than the substance of the matters at issue. Our expectation is that the great majority of complaints raised against teachers will be successfully addressed at school level. The GTCE recently responded to a government consultation on the adequacy of the arrangements for considering parental complaints: *A New Way of Considering Parents' Complaints About School Issues*—November 2008.

5. Where the allegation is a serious one involving abuse, our expectation would be that the school would address the matter under the relevant procedures, which are contained in the guidance: *Safeguarding Children in Education: Dealing With Allegations of Abuse Against Teachers and Other Staff* (DfES/2044/2005).

6. The GTC does not have data about the level and nature of complaints about teacher conduct which we assume could only be collected from schools and local authorities directly.

7. As stated above, it is possible for a member of the public to make a complaint of improper conduct by a teacher directly to the GTCE. The GTCE has published information about its role which is widely available. Specific guidance on how to make a complaint of misconduct against a teacher is available on our website at http://www.gtce.org.uk/parents/howto/#express_concern.

8. The role of the GTCE is to consider allegations which are sufficiently serious to meet the threshold of matters capable of affecting the registration status of the teacher. At the same time, we must also make it clear that our role is not to consider cases where the teacher may represent a risk of harm to children nor are we a general complaints body or ombudsman for all complaints about the education system or the performance of schools.

9. The table below shows the numbers of public complaints against teachers received by the GTCE since 2003:

<i>Financial Year</i>	<i>Referrals received</i>
2003–04	32
2004–05	29
2005–06	34
2006–07	56
2007–08	92
2008–09	98

10. We consider the pattern of increase in such referrals reflects an increasing level of awareness of the GTCE's role rather than any decrease in the standards of behaviour by teachers.

11. The great majority of such referrals to the GTCE are matters which are more appropriate for resolution at school or otherwise at local level or are matters for other bodies in the education system: eg Ofsted. Very few such referrals reach the threshold of seriousness that would be relevant to registration status and in the period covered only three cases have resulted in a sanction at hearing.

WHETHER STAFF SUBJECT TO ALLEGATIONS SHOULD REMAIN ANONYMOUS WHILE THE CASE IS INVESTIGATED

12. In relation to allegations of abuse, the GTCE has previously commented on this matter, in response to a previous consultation on a revision to the guidance: *Safeguarding Children in Education: Dealing with Allegations of Abuse against Teachers and Other Staff* (DfES/2044/2005).

13. On 4 May 2007, in response to a report from the National Association of Head Teachers, the GTCE's Chief Executive Keith Bartley said:

"I have huge sympathy for all teachers facing an unfounded or vexatious allegation of misconduct or abuse. I strongly support Mick Brooke's statement this morning that everyone's primary concern must be the safety and protection of children but I also feel that these allegations could and should be dealt with more fairly and effectively. The public interest does not require that the teacher or head teacher be named at the point when an allegation is first raised. That should wait until the point that an adult is actually charged with an offence. I also think that more should be done to challenge those who make false accusations, because they currently face no consequences for the distress and anxiety they bring down on a teacher and on the whole school.

WHETHER THE GUIDANCE AVAILABLE TO HEAD TEACHERS, SCHOOL GOVERNORS, POLICE AND OTHERS ON HOW TO HANDLE CLAIMS OF IMPROPER CONDUCT BY SCHOOL STAFF SHOULD BE REVISED

14. The guidance: *Safeguarding Children in Education: Dealing With Allegations of Abuse Against Teachers and Other Staff* (DfES/2044/2005) contains carefully considered guidance on the procedures for dealing with allegations where a teacher may have:

- behaved in a way that has harmed a child, or may have harmed 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 s/he is unsuitable to work with children.

15. This guidance has been produced with the advice of the national network of Investigation and Referral Support Co-ordinators Network established by government in 2001, with a view to establishing and disseminating best practice in this area and was previously agreed with a wide range of stakeholder bodies. It covers the role of the school in following disciplinary procedures, the circumstances where

suspension is appropriate, police involvement and record keeping in some detail. The GTCE does not have evidence which it can draw upon of the extent to which the current guidance has been successful in supporting the effective management of allegations in this area.

16. Where the allegations do not fall within this category, guidance for schools is available through the personnel provider to the school, whether the local authority or a private company. General advice and guidance on the formation and operation of procedures in these areas is provided through NEOST.

OBSERVATIONS ABOUT THE ROLE OF THE GENERAL TEACHING COUNCIL FOR ENGLAND

17. The GTCE is aware of the very high levels of concern expressed by teacher associations about the protracted nature of these proceedings and how stressful these are for the affected teacher and the wider school community. We recognise that there is the potential for teachers to face the further prospect of a referral to the GTC—either because the allegation has resulted in dismissal or resignation by the teacher or because complaints may be raised by the teacher against other teachers or school leaders involved in the process. To date, however, this has not arisen as an issue.

18. The GTCE has concerns that the new arrangements for referring cases either to the ISA where they raise child protection issues, or to the GTC on other conduct issues, may not yet be fully understood by employers and that this has the potential to introduce a further layer of complexity and difficulty.

19. We believe that local authorities and personnel providers should be considering an extensive programme of support and training to ensure that schools operate all the relevant procedures in relation to allegations against school staff effectively, promptly and fairly.

May 2009

Witnesses: **Sir Steve Bullock**, Chair, Local Government Employers, Local Government Association, **Clare Collins**, Chair, National Governors' Association, **Nick Gargan**, Association of Chief Police Officers, **Fiona Hammans**, Association of School and College Leaders, **Kathryn James**, Senior Assistant Secretary, Policy, Politics, Education, NAHT, and **Alan Meyrick**, Registrar and Deputy Chief Executive, General Teaching Council for England, gave evidence.

Q36 Chairman: I think we are going to break into the Guinness Book of Records for a select committee's number of witnesses this morning, particularly as I believe that six of you are now going to be joining me. I am sorry that it is such a squeeze but it is, again, a delight to have such a well-qualified group of witnesses in front of us. You will know the time constraints, and as I told the last group of witnesses it will be quite rapid fire. I shall look rather impatient if you go on for too long, but you are a distinguished bunch so I shall probably be very deferential. Clare Collins, Alan Meyrick, Nick Gargan, Kathryn James, Fiona Hammans and Sir Steve Bullock, welcome indeed—particularly to Fiona. I remember that you were very helpful when we looked at education outside the classroom on a previous inquiry, so it is nice to have you back. Sir Steve, you haven't been in front of us before, have you?

Sir Steve Bullock: I have not.

Q37 Chairman: Welcome to you too, and to Nick Gargan, who came in at short notice. That was very good of you. We shall now get on; some of you have been sitting at the back and heard the first session, didn't you? Who didn't? Nick, you weren't there. Fiona? Good—some of you have been primed nicely. We usually give people a chance to say something before we get started. I shall start with Nick Gargan, because we have just had some pretty interesting evidence that we'll drill down into in a moment. Let's ask you the general question: the Police and Criminal Evidence Act is pretty clear on when you arrest a person and when you don't, why does it seem necessary that a teacher who is happy to comply and goes down to the police station to be

helpful, but still gets arrested? It is a significant moment in their lives. If you read the Act it's not necessary, is it? People don't have to be arrested.

Nick Gargan: I suppose it depends how you define necessary. In Thames Valley police, we arrest about 60,000 people each year² and the idea of not arresting a significant proportion of them would cause us some real control problems. If you have somebody at the police station and they are wandering in and out—we interview them, they provide us with some information and then they disappear off—we may well want to check the facts. Knowing where people are gives us a degree of control to deal with issues that arise during their interview, evidence that they present, evidence we might seek to obtain, and other people that we might want to talk to. Arrest is an effective administrative mechanism for keeping hold of people and having them where we want them.

Q38 Chairman: But Nick, you know and I know that all the evidence shows that of the allegations of some form of misbehaviour in relation to teachers, only about 5% have ever been proven to have any substance. A teacher who has no criminal record, has not been in trouble with the police or the law at any time in their life, and is fully complying with your investigation, is still arrested. Surely, good common sense would suggest that teachers in that situation should normally not be arrested.

² *Note by witness:* The number of people arrested in the Thames Valley in 2008 was 68,376.

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

Nick Gargan: Indeed. Good common sense dictates that that happens most of the time. Most of the time we don't arrest people. In a very small number of cases, officers do arrest people. I think that arrests of teachers represent about 0.2% of the arrests in the Thames Valley policing area, and most of those relate to actions that take place off-duty and away from school. These are tiny numbers, and I suspect that, if anything, officers are more reluctant to arrest a teacher, in the same way as they would be more reluctant to arrest a police officer, a doctor or people in a comparable line of business. I don't think that we are particularly over-ready to arrest teachers, but on occasions it is necessary.

Q39 Chairman: Nick, I picked on you because that point came out very strongly at the end of the first session. Sir Steve, you have heard some of the evidence this morning, do you perceive this as a problem, or do you think it's a storm in a teacup?

Sir Steve Bullock: I think that it is a problem, in two ways. Local authorities have a dual role. We have an absolute responsibility to safeguard children but we also have a duty of care to teachers who are in our employment or are working in schools that we have relationships with. That means that we have to think very carefully about how we get the balance right and how we give advice. I was very struck by something that was said in the earlier session. The other part of it—other people might want to say more about this—is that the people who have to deal with these things, which will come up out of a clear blue sky, even if they have had theoretical training, very often won't have had any previous experience. We are expecting them to make judgments in a climate in which if you get the judgment wrong you are likely to be pilloried yourself. That is at the heart of it, and is why what I think we look to local authorities to do is to support both parties: to support the school, the head, the chair of governors and so on, but also to be sure that the teacher, or other member of staff, who is accused is getting their support. Trying to get that balance right is our challenge.

Q40 Chairman: Fiona, is there a problem here that we should be addressing?

Fiona Hammans: Our view is that there is a problem. Certainly, when we talk to colleagues nationally, there appears to be a presumption of guilt. I know you will have heard that in the evidence in the earlier session. If it is a member of school staff, it is almost more likely that there will be an arrest and a follow-through by the police. That is our perception.

Q41 Chairman: Kathryn, you also gave evidence on education outside the classroom. Both of you should be invited to the opening of John Clare's cottage on his birthday on 13 July. It will be a national centre for education outside the classroom.

Kathryn James: Excellent. Thank you.

Chairman: I like to get it on the record, you see. Kathryn, is there a problem here?

Kathryn James: Yes, there is a problem. Steve made a very interesting point about maintaining the balance, and that is where the difficulty lies. I think that the balance has shifted almost too far one way. There is always a pendulum swing. It is important that children are heard and their concerns are listened to and weighed properly, but I think that we have gone almost too far in this perception of guilt, with innocence having to be proven. That is a real concern. Things are exacerbated and move very quickly towards arrest—that is our perception. Both Fiona and I come from a background where we manage the allegations set up and the organisation of any investigation, and our members are subject to those investigations, so we have a dual role. But it is undoubtedly a very difficult and complex area and I don't think that there is either sufficient experience or sufficient guidance in all fields. I would go across the board—teachers, head teachers, governors, the police themselves, as well as local authorities. Although there has been a rise in the number of allegations, there has not been a commensurate understanding that there needs to be additional training across the board.

Q42 Chairman: Alan, is there a problem, from where you stand?

Alan Meyrick: We have talked already about a sort of pyramid of allegations where, apparently, only the top 5% are ever proven. The General Teaching Council is only dealing with cases where the teachers have already been dismissed for misconduct in schools, or there have been relevant criminal convictions. From where we sit, there need to be good, clear, transparent procedures and good support given to those against whom the complaints are made and to those who are supporting those teachers—the head teachers, who need to deal with the management of the complaint, the governors and so on, and the employers. Proper support also needs to be given to those who are making allegations, so that they understand and have a proper expectation of what they should properly be doing. With many pupils, if you give them a clear understanding of the seriousness of the allegations that they might be making, you will, hopefully, be able to manage some of those false allegations down so that the only ones coming through are those where there is something that needs to be properly investigated.

Q43 Chairman: Clare, you are from the National Governors Association. You are intimately involved in many of these cases. Is enough advice and guidance given to your members, in terms of how they behave themselves and handle such situations?

Clare Collins: Our issue is not with the guidance but with the training and advice that underpins it when you are into a case. A common theme that comes through—both from the previous session and already in this session—is that these things don't happen often, so the approach seems to be that we will deal with issuing advice and guidance and talking people through it when it happens, because you are on a long journey. But when it happens, it

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

can be catastrophic, so that training should happen beforehand. We would be looking for head teachers to be trained as part of their induction to the profession, in the sense of, “This might not happen, but if it does, you need to know what happens.” That is mentioned in some of the submissions that you have had, but nowhere is it mentioned that the governing body should be trained as well. I think that specifically, the chair of governors should be trained. If the governance review ever sees the light of day, there is an issue in there about chairs of governors getting specific training. What should be part of that specific training is, “Should this happen, this is what you will need to know.” The thing is, you need to know it quite quickly when something happens.

Chairman: Thank you for that. Derek, you have quite a bit of experience in this field. Are there any general questions that you want to ask any of our panellists?

Q44 Derek Twigg: I wonder whether there is any evidence, where some schools do well and other schools do not, of some sort of networking? Have there been any sorts of discussions among schools to see where the process works pretty well in difficult circumstances and where it does not? Is there some pattern here, some behaviour?

Kathryn James: I think that a lot of it is based around the nature of the way the local authority works. Clare made an interesting point about head teachers and chairs of governors needing training. I would take it back even further and say that there needs to be some awareness raised, even as people are entering the profession, that they may face an allegation, because it would start to take the panic out of the situation. I think that there is an element of panic because these cases are so infrequent, albeit too frequent from our perspective. Where incidents are handled well is where the local authority and the schools have a very good support system, a very good network and they offer training because they are aware of the developments within the community. That makes the whole process a lot smoother and does help move things along quickly.

Q45 Derek Twigg: Do you have schools that are good exemplars of how to deal with it?

Kathryn James: Yes, we have. We can send you some information, if that would help.

Derek Twigg: That would be useful.

Fiona Hammans: I agree with everything that Kathryn said, but it is the nature of the youngsters in the school that can also place staff at more or less risk. There is a management style, there is a training need, there is following procedures and protocols accurately by all the different agencies involved, but there is also something about the nature of the youngsters in the school. There are schools where youngsters are more likely than those in other schools either to distract away from their own misbehaviour, shall we say, or to make malicious allegations to avoid things. That needs to be taken into account.

Q46 Derek Twigg: Do you think that you get enough support from local education authorities on that?

Fiona Hammans: Our evidence suggests that there is variability.

Clare Collins: I support that. There is huge variation in the level and the quality of support offered by local authorities. We have anecdotal evidence of that, not systematically researched evidence.

Q47 Derek Twigg: And what do the local authorities say to that?

Sir Steve Bullock: In one sense, some degree of variability is inevitable—authorities work out their own approaches in their own circumstances. What we seek to do is to offer them guidance—that is an area that we are looking at doing more in. What is certainly clear to me from experience in my own authority is that the initial reactions are critical, but that there are people within the authority—often legal people or HR people—who will have wider experience, and getting them into contact with heads, chairs of governors and so on is crucial. Not reacting immediately, but drawing breath is a very difficult thing to enshrine in guidance and practice. That is certainly our experience.

Chairman: We are now going into rapid fire, led by Graham.

Q48 Mr Stuart: Is there any evidence that there is a higher number of complaints—we know that certain schools have higher numbers than others—in schools serving deprived areas?

Chairman: Would you catch my eye if you want to be the lead person in any question? Kathryn?

Kathryn James: I would not necessarily focus on the deprived areas. Picking up on something that Steve just said, the interesting thing is where, if something is dealt with perhaps in not the best way, that sets an ethos within a school and a school community. It is not so much deprived areas, because in some such areas the school is the absolute centre and fulcrum of that community and allegations are very few and far between; those that arise are dealt with extremely well and the parents and the whole community know that that will happen. Of course, the nature is also true, but it is not so much the nature of the community as the whole ethos around the handling of the complaint in the first place.

Q49 Mr Stuart: That is a good answer, but it doesn't answer my question. We have very large panels today, of which this is the second, and I cannot get a straightforward answer on whether there is any evidence—yes or no—of a correlation between complaints and deprivation. If there is not, then I could move on, but if there is, I would be interested in the exacerbating effect that that has on the ability of deprived area schools to attract teachers and to retain good teachers and, thus, on the entrenchment of disadvantage in those areas. That is what I am interested in, but that has to be based on evidence. Perhaps we just don't have it, but I would like to know whether anyone is aware of it. Is it not true, or do we not have the evidence?

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

Kathryn James: We don't have the evidence.

Nick Gargan: From a policing perspective, we can map our "busyness" against deprivation and, yes, there is clear evidence that there would be more reports, more vulnerability. However, on allegations against teachers as a specific subset of reporting, I don't have that data.

Chairman: We don't have any evidence, Graham.

Q50 Mr Stuart: Okay. What scope is there to condense or to amalgamate the various investigative processes? Those of you who heard our first session, just how many investigations can there be?

Sir Steve Bullock: I was a bit taken aback by the example that the Chairman gave earlier, of the three successive investigations. That seems to me to be very poor practice. I would not want to speculate about how you might make detailed changes to the process, but it seemed to me that we, as local authorities, need to look at the guidance that we give. Equally, there are issues about the standard of evidence required for action. I suspect that is what is behind the difficulty. I would not want to try to answer that without talking to my lawyers first.

Alan Meyrick: I think we are quite fortunate in that the legislation that governs how we look at cases sets out very clearly the sort of evidence that employers need to provide to us. If there is some coherence across the collection and use of evidence in the early stages, that means that when we come to our investigation, which is looking at a very particular thing—whether or not the teacher should remain registered—we can use that evidence that has already been collected for previous purposes. The definition of what that evidence needs to be has been set out. If employers follow that guidance and those statutes, we get that evidence and we don't need to do too much further work.

Mr Stuart: Nick, do you have any comment on that?

Nick Gargan: Few would dispute the need to keep the criminal investigation separate. Any changes to professional regulation would be quite separate from criminal investigation, but already we encourage our officers to obtain evidence in a way that can be shared and used for a dual purpose, such as professional hearings.

Q51 Mr Stuart: Again focusing on you, Steve, but perhaps bringing in Clare as well, the emphasis in the last session was very much on the need for early judgment—we heard that it was the early stages where the key decisions are made that had great implications further on. What do you think the local authorities should be doing initially to ensure that the right early decisions are taken?

Sir Steve Bullock: In some ways it is actually not about taking early decisions. What the authorities need to do is make sure that whoever is doing that first investigation does not fall into the trap of assuming that because an accusation has been made, a crime has been committed. I think the authority is well placed to do that. We have to be neutral in the advice that we give. Once we are clear that there is a case to answer, the situation changes and we would

want it to be pursued as quickly as possible. I think at that early stage, however, we have to counsel people against leaping to conclusions.

Q52 Chairman: Does that suggest a sort of conciliation process before any action is taken?

Sir Steve Bullock: There can be circumstances in which a complaint has arisen out of disciplinary issues—that may be part of it—but I was thinking more about the fact that most people don't get to deal with this, so they feel that it is a terrible thing, the worst thing that has ever happened. For the accused, it probably is, but in fact, it might go away, and the evidence is that in many cases it does go away because it was based on an allegation that was not necessarily malicious, but based on misunderstandings or teachers dealing, as we were hearing earlier, with complex disciplinary issues. We need to make sure that, in the early stages, we don't ramp the thing up, so that there has to be a major investigation. In those crucial first few hours and days, it might turn out to be a non-event. It is the local authority's officers who are able to do that, because they will have seen these things before.

Fiona Hammans: The initial phases of any allegation are critical for the whole school community. As Kathryn said, our members manage the school community more widely, as well as the individual student or parents who have made the allegation and the member of staff who has had the allegation made against them. If the local authority is the body that gives the advice, makes the decision and talks about the way forward for the investigation—or not—we want that to be communicated very quickly back to the school. That needs to be done equitably and fairly. We have already identified that there is variation across authorities, and that is inevitable, but some authorities go after school staff if an allegation is made, whereas others look at the balance between the allegation and the member of staff's needs and, as you said, make some kind of measured judgment between the two. Our greatest concern is the variability in the system. The local authority might do an investigation and another agency—for example, the police—might take a different view altogether.

Kathryn James: One of the other issues, which you talked about, is the number of different investigations. There is a tendency to hit the investigation mill, and once it starts churning it is a long, slow and almost mechanistic process that takes away some of the sense. If I can give some anecdotal evidence, we had a member—in fact, we still have—who in September was suspended without anyone asking her for her version of an event. She is still out of school—almost an academic year. In that incident, she stopped an autistic boy jumping out of a window because he wanted to run away from school. No one asked her what had happened, because everything was confidential. It was suspension; it was a neutral act. When all the investigation mechanism chugged in, when it eventually went to CPS, they said, "This is absolutely ridiculous. No one would look at this and see any sense to it." Then it went to the local

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

authority, who said, “Oh yes, but we need to investigate it,” so the suspension was still not lifted. Eventually the suspension was lifted and the governing body said, “Now we need to have a look because the accusation was made in school.”

Q53 Chairman: So the anecdote that I gave, that Steve thought was a little exaggerated, is actually right, isn't it?

Kathryn James: Absolutely.

Chairman: One waits for the other to be completed.

Kathryn James: Correct. And it just chugs on. It could have been dismissed within a week.

Clare Collins: We advise our members to look at the incident and see if it is credible, which is something that you can do in that first instance of it happening. There are cases where an allegation has been made against a teacher who was not in the school at the time. There are allegations made that are absolutely incredible. Therefore, in those few hours afterward—as you would deal with any disciplinary issue to do with a student or a pupil—you are advised not to take knee-jerk action. That is where I think there is an issue: people are frightened, so they respond in a knee-jerk way. It is a recurring theme of what we are all saying.

Q54 Mr Stuart: Rather frightening a prospect, isn't it? We go from the suspension, which is a neutral act but everyone infers something, to arrest, which apparently is a neutral act but everyone infers something. You can see why the mechanistic process follows on, because if all those other things have happened, there must be something worth investigating, which is frightening for professionals. Can I ask a general question? When we had the new Schools Minister in a couple of days ago, I asked him to look at all his decisions through a prism of how to attract and retain the best possible people in teaching. Can I ask you a very difficult, general question? Someone in the first session referred to the chilling effect. To what extent does the implication of what you expose yourself to as a teacher if you have allegations made against you—however rare—impact on the attractiveness of teaching as a profession for those coming into it? Do you have any evidence of that?

Chairman: A quick one.

Alan Meyrick: Crumbs, I'm not sure I've seen any evidence making a comparison with other professions. In the nursing profession, the Nursing and Midwifery Council deals with a lot of complaints from patients about the behaviour of nurses, and so that must impact on recruitment and retention within that profession. I am not aware of any evidence that particularly focuses on teaching, but that must be an issue. In the earlier session, people talked about the need for those involved in initial teacher training to help teachers to understand the expectations and the policies, procedures and structures that are in place to support them when allegations are made, and to avoid situations that might lead to allegations. I think there is a bit of that needed as well.

Kathryn James: We do have anecdotal evidence that people, particularly when they are considering taking up a headship, are put off such a role both by the allegations made against heads that hit the headlines and the responsibility of managing such a difficult situation. We have had a number of people saying, “I really don't want that level of responsibility, because I will be working with colleagues who I work alongside in school and taking on a difficult situation, and I know—I have seen it happen—so therefore I don't want the responsibility of managing that.”

Chairman: I think we are going to move on.

Nick Gargan: Before we move on, can I rewind to a comment that Mr Stuart made about arrest, and the idea of arrest as a neutral act? I would not want to leave that unchallenged. As part of preparing for this morning I dug out the lesson notes to find out what we teach our new recruits about arrest. Certainly, within policing, it is very clear from the training that they receive. The notes state: “To be arrested will be a shock to the person, especially if they have never been arrested before. It is an aspect of practical police duty that requires great care. When arresting people you will be depriving them of their liberty. This may have serious consequences if you are not acting according to law.” That is a tone which is heavily influenced by the human rights legislation that is very much drummed into our officers, particularly those who are most likely to be effecting arrests in this arena. They are likely to be officers within specialist child abuse investigation units. To balance the impression that this morning's discussion may have created—that we would accept that there are too many arrests—I don't think that is necessarily the case.

Chairman: That is a good and fair point. David, we are going to drill down on this right now.

Q55 Mr Chaytor: Can we go back to the question of the early stages and the role of suspension, because that seems to be key to many of the problems identified? What can individual head teachers do as alternatives to suspension, and are all teachers facing allegations given the opportunity to state their case before being suspended?

Fiona Hammans: They certainly should be. The change in employment law a number of years ago meant that if you were considering suspension, you should discuss it with that person's union representative and come to an agreed set of actions, because while suspension is neutral in law, it is never interpreted that way. There is a range of options open. Where there is an allegation from one child in one class about inappropriate behaviour of the teacher, you can change the teacher's timetable. If it is something more significant, you might be working from home—in other words, not being in school. You can do a range of things to secure the member of staff from further distress and harm to their well-being and, importantly, to make sure that the youngster sees that there is some response to the allegation, and that they are secured from any further harm. However, it is very difficult when you are in panic mode either as a head teacher, a

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

governor, or a local authority. When you have the press banging on the door and the phones going, you think, “Right—suspend. It’s dead easy, and looks like we’ve made a robust response.”

Kathryn James: I think what Fiona says is absolutely right. Other options are available and, again, where schools work closely with local authorities, we have had instances where the authorities have, for example, used the teacher or head teacher in different areas and had them within the local authority, if that was felt to be appropriate. Whatever is said about suspension, it is never neutral. There is always the thought, “There’s no smoke without fire.” I think that the issue of anonymity in terms of any allegations has to rear its head, and we would argue strongly that there has to be anonymity.

Q56 Mr Chaytor: But is that practical in a school setting?

Kathryn James: It is if other options are considered, because while there is always the rumour mill—we can never get away from it, and that is true in any situation—there is an element where it can be contained if other options are considered and used.

Q57 Mr Chaytor: When the investigation starts, are you all confident that the balance of rights between the investigator and the accused is fair, or are the odds stacked against the accused when presenting information and developing the case?

Fiona Hammans: From the information we have through hotline, people phoning in extremis—or people saying, “I’ve got this situation in our school,”—very much feel the person who has had the allegation made against them is absolutely guilty, and that person has to prove that they are not. That is the position you start from and the investigation manner quite often reinforces that. If you are talking about suspension on top of it, clearly you are guilty. The other thing to remember is these colleagues have gone into a job within a setting that is all about trust, working with people and developing youngsters. They are giving of themselves personally. So when the allegation is made and they are investigated, it goes right to the core—not just the professional core, but the core of them as a person.

Kathryn James: I think the skill of investigation is underestimated. Fiona made the point that people go into education because they want to educate. They are not necessarily there to investigate serious issues. They may have the skills, but it is not something that is naturally incorporated in their training. If you are called on to investigate an incident, it is easy—in some instances—to see the case stacking up against a person, and not appreciate that you also have to look very carefully at the opposing evidence. That balancing act is not something that everybody is able to do easily.

Q58 Mr Chaytor: So there is not a pool of registered investigators in each local authority, it is entirely up to someone to decide who the appropriate person is under the circumstances? Who decides who the investigator will be?

Clare Collins: It is ad hoc.

Sir Steve Bullock: It will vary according to the circumstances. It depends partly on the type of school—whether it is a primary or a secondary—and even on the nature of the allegation. If someone has found child porn on a laptop in school, there will have to be technical people and experts. Or it might be an issue such as whether a teacher struck a child. So there is no simple answer to that. It comes back to making the right judgment call, I’m afraid.

Q59 Chairman: But one individual must decide to launch the investigation. Within the local authority, who is that individual?

Sir Steve Bullock: In the first instance in most cases it will be the head teacher. In a community school, certainly in my own authority, I would expect the head teacher to consult with a senior officer in the children and young people’s department, and—depending on the nature of the allegation—possibly push it as far up as the director.

Q60 Chairman: But where is the local safeguarding board coming in on all this?

Fiona Hammans: As a head teacher, if I were to receive an allegation, I would have to make some judgment about its level of severity and seriousness, and so on. But if it is something that is easy in the sense that there is clear evidence, or the allegation is serious enough to be able to pass straight on to the local authority designated officer, that person makes the judgment call about what happens, in what order and in what way. The difficulty arises—and the variability in response is—if the head teacher or a governor makes a decision and does not follow the protocols. It is about the protocols that are there to safeguard.

Q61 Chairman: But the only person with protocols is Nick Gargan—he read out what the police have to follow. If they can do it, why can’t the teaching profession have that sort of guidance?

Clare Collins: There is a very real issue if it is the head teacher because the responsibility usually falls on to the chair of the governing body. I cannot emphasise too much how difficult it can be to get hold of the information; as a chair of governors, you won’t have that on your shelf. It will be on a website somewhere, it might be password protected, and I have had someone from my local authority HR saying, “I’m not sure you want the whole document, it is rather long.” I won’t say what I said back, but that is the sort of thing you are dealing with. I think there was a suggestion earlier that there should be a small booklet that tells you what to do if the balloon goes up. That would be incredibly useful.

Q62 Chairman: No one came back to that question about the local safeguarding board. Where does it get involved? Does it get involved?

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

Clare Collins: I don't know.

Chairman: I am told it does.

Sir Steve Bullock: We will happily give you a written detail on that,³ but I think it depends on the nature of the allegation. If it is clearly child abuse and so on, that kicks in, but we will come back to you.

Q63 Chairman: What we are trying to get at is this: if an independent person is asked to look at the case, who chooses that independent person, and on what criteria? It is quite important, is it not?

Kathryn James: Picking up on what Fiona and Steve both said, it very much depends on the nature of the allegation as to who will make that decision. The local safeguarding board does come into play, but actually that is probably quite high on the level in terms of the severity of the allegation. There is a protocol that is in force, but there is a plethora of guidance, and none of it necessarily ties in with the protocol that is there. It was mentioned in the previous session. It is known as the CLEA guidance, and it is the local authorities working with the teacher associations. It was a good piece of work. I think we have moved on a stage, but maybe that is something that ought to be revisited.

Q64 Mr Chaytor: To clarify, in regard to who decides who will investigate, would it usually be the head teacher, or would it be referred up to the Director of Children's Services?

Kathryn James: If it is an allegation that is made to the head teacher, the head teacher would take that first decision, in terms of the severity of the allegation. Whether the head teacher would refer it up or whether they would allocate an investigator depends on the severity of the allegation.

Clare Collins: If it is the teacher whom the allegation is against, the governors would have to work closely with the local authority as to who is allocated the role of the independent investigator. They would be dependent on it to identify one. What I expect is that they would run it by the governing body.

Q65 Mr Chaytor: It is still a little bit fuzzy as to exactly who has a legal responsibility to appoint an independent investigator. You are all saying that it varies according to the circumstances.

Sir Steve Bullock: We don't always appoint an independent investigator. It is only in relation to the most serious allegations that you would do that. I would not expect it to happen in my authority. I would expect, if it was a very serious case, a senior officer of the authority to be the person who carried out the investigation. So it is not always the case that you look for the independent investigator.

Nick Gargan: It is very clear who investigates, and in terms of the serious case reviews, we have a procedure for appointing, usually, a detective inspector from a separate local police area to come

along and carry out the review. When you move into complex cases, we would refer to the joint Home Office-DCSF guidance, which is very clear and sets out the kind of strategic management board structure that we have activated in Thames Valley police over the last couple of years, but only on one or two occasions.

Chairman: We will move on to the question of arrest, which Edward will lead on. It is a pleasure to have you here, because the Committee very much believes that of the 10 departments that we follow in relation to the activities and lives of children and families, the police and the relevant departments are very important to us. We find in all our investigations, we need the co-operation of you when we look at the welfare of children. So it is very good to have you here.

Q66 Mr Timpson: You already flushed out a little about the role of the police in any investigation involving teachers and, in particular, the issue of arrest. Can I draw you in a little bit more and ask you whether you would be opposed to the submission made by Paul Kaufman, the solicitor who was in the previous panel? He has put forward in his paper that, in relation to police investigations, teachers should be treated as a special case, and that clear guidance should be given to child abuse investigation teams to ensure that teachers are arrested only in exceptional cases, where it is necessary.

Nick Gargan: I didn't hear the evidence, but I have read his submission and I would make a couple of comments. First, there are lots of groups of people who would like to be treated as special cases; in a way our role is to put up with the noise of such people while maintaining an independence in order not to forget the victim's position and the interests of the wider community. I think that there is an existing, informal practice, which we pick up from discussions with child abuse investigation units and others, that people think carefully about arresting teachers. They think carefully about arresting anybody, but they already think especially carefully about arresting a teacher. I think that the way to deal with these odd cases that one hears about from time to time, where the power has allegedly been used carelessly or inappropriately, should be through the police conduct regulations, not through changing the rules about arresting teachers. The evidence that I have seen is that the police are very careful indeed. I shall give you a sense of the figures in our policing area: Thames Valley police has 8,000 employees—4,000 of whom are police officers—we police a population of 2.2 million and we record around 200,000 crimes a year; those are pretty large numbers. We arrest about 70,000 people a year,⁴ not all for recorded crimes, and of those 116 are teachers. Many of those arrests are for other crimes: 20 are for drink-driving or possession of drugs, there are even a few burglaries and frauds in there as well. Those are not to do with their professional lives, but to do with criminality away from the workplace. This issue accounts for very few of the arrests made and it

³ *Note by witness:* In any documentation reference should be made to the Department's *Working Together to Safeguard Children* publication (2006). Chapter 3 deals with the role, functions, governance and operational arrangements of LSCBs. Paragraph 6.20 onwards in Chapter 6 focus on the LSCB role in handling allegations of abuse.

⁴ *Note by witness:* The number of people arrested in the Thames Valley in 2008 was 68,376.

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

would be my contention that they are made, by and large, for very good reason. Reading the submission from Mr Kaufman that we are discussing, on occasion it might be that the police have some very good reasons for a course of action, but it is not in our interest, or anybody's interest, to discuss those, confer or collaborate with the defence solicitor. Part of investigatory activity from time to time will be covert and we cannot announce it to everybody. The argument for making a special case is not supported by either the evidence or by good investigative practice.

Q67 Mr Timpson: As a Committee, how do we square what you tell us with the evidence given to us by the NUT and the ASCL? They say that the police arrest teachers too readily.

Nick Gargan: We can look at the figures and the cases and assess whether the arrest is justified. In the wake of human rights legislation, if we look more broadly at reviews such as Sir Ronnie Flanagan's review into policing, we continually find evidence of risk aversion on the part of the police, rather than reckless risk taking. I think that we need to shine a light onto the facts and see whose argument is best supported by them. My view is that our use of arrest against teachers is very limited.

Q68 Mr Timpson: Is there any guidance from the Department for Children, Schools and Families about when to arrest? They didn't give us a response when we put that as part of the terms of reference in their memo to us.

Nick Gargan: I haven't seen any guidance from them; we tend to rely on the National Policing Improvement Agency. There is some very effective guidance dating back to 2005 on investigating child abuse and safeguarding children that has an annexe specifically dealing with these issues. We are also guided by *Working Together to Safeguard Children* and the initial police learning and development programme and the Professionalising Investigation programme, which are our own in-house training materials, one of which I have quoted to you already. We turn to those for advice—I am unaware of guidance from the DCSF.

Q69 Chairman: I don't think the *Hansard* reporter could see you lift that document. Do you think they can have a copy?

Nick Gargan: They can have my copy if they want.

Q70 Mr Timpson: Just on a slightly different issue about CRB checks. I know you were not here earlier to hear the evidence given, but there is quite clear concern among many in the teaching profession about the enhanced information on CRB checks; the police feel that such soft information is relevant to that person and their future employment. Both the terminology used by the police in that and the necessity for it in every circumstance is not always right. Do you accept that? If you do, is there anything the police should be doing to try and improve the phrasing they use on CRB checks as well as their role?

Nick Gargan: The first point I will make is general. All we do is supply the information. We don't make decisions, we simply provide information on which others will base decisions. At the risk of diving back into the safety of numbers, a force like Thames Valley police—with a population of just over 2 million—sees enhanced CRB checks coming in at the rate of 1,000 a day.

Q71 Chairman: How many?

Nick Gargan: A thousand per working day, or 200,000 a year, and of those, about one a day will fall into this category. This is in relation to all categories, not simply teachers. About one a day will be considered for disclosure either of soft intelligence, or of conviction information, where we decide to put some additional context to that information. For example, somebody might have been convicted of assault causing actual bodily harm, but to do justice and understand the context of that offence, we want to add some information, such as that the victim was a seven-year-old child. Together, those two categories amount to one per day—the additional information disclosure. The person in our force who makes the decision on whether or not to disclose that information is me. It is always a chief officer in Thames Valley police. I make half a dozen of those decisions a week. If you compare that to the authority level required to conduct an intimate search of somebody, carry out surveillance or acquire communications data and so on, those authorisation levels are taken at much more junior levels in the organisation. We do that because we take this incredibly seriously. With the majority of cases that come my way, I sanction the disclosure—the additional information. In relation to teachers, so far this calendar year we have made five disclosures in Thames Valley police. Three were related to violence, one to a matter of public indecency and one to a matter of grooming of a young woman in the workplace.

Q72 Chairman: What was that?

Nick Gargan: Grooming of a young woman in the workplace. All five of those were considered very carefully by a chief officer, as are all of our additional information disclosures. There is an avenue of appeal back through the CRB to ask us to reconsider in the light of additional information provided. I cannot speak for every police force in the country, but I know that police services are acutely aware of the risk they take—the risk of being sued or of being held to account for a perverse decision. We balance that with the risk of hanging on to information that might be relevant or true and that might prevent harm to children. I apologise for the long answer but it is a complicated question. We discharge that serious responsibility with an appropriate level of care.

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

Chairman: David, shall we come back to you?

Q73 Mr Chaytor: Just a couple of things. Clare, you touched on the question of more training needed for governors in this complex area. What would be the three most important areas for further training? What do they need to know most?

Clare Collins: Basically, just understanding the law and what they should know and then some sort of role play where they work through a process. When this happens—and it has happened to me—you feel like a rabbit in the headlights. If you had gone through it in that safe, secure environment, you would respond more appropriately.

Q74 Mr Chaytor: Finally, just one specific point. When staff go to disciplinary hearings—if it is for a very serious allegation—do they get legal representation, or should they?

Clare Collins: Are you looking—

Mr Chaytor: I am just throwing it out to anyone who may know.

Clare Collins: It might be better if Fiona dealt with this.

Chairman: Fiona?

Fiona Hammans: It would probably depend on the local authority agreed protocol. In our authority you can have legal representation if the Governors are happy to accept that.

Q75 Mr Chaytor: So, will it vary authority by authority, or school by school?

Fiona Hammans: Depending on whether the status of the school is community or foundation. The association's view is that if it is so serious that it could have such a level of impact on your professional and wider life, then you would be well advised to have counsel.

Q76 Chairman: Who pays the lawyer?

Fiona Hammans: It could be the individual if they chose to, or it could be their professional association or union.

Q77 Derek Twigg: Just one general thing. When I was at school, if I ever got in trouble—of course, it was never my fault—I would be more worried about my parents finding out, because I would be in trouble with them. All head teachers these days tell me that the number of teachers who come in on the bounce, because their little Johnny “Couldn’t possibly have done anything wrong and would never tell an untruth,” has massively increased in recent years. That is your view and that is what head teachers tell me, so what is the role of the parents in this procedure? We have not talked about parents at all today. What happens to the parents? Are they interviewed, do they come in, do you talk to them? Often the parent can tell—not all the time, obviously—whether their child is telling the truth or not. What is the role and the responsibilities of the parents in these procedures?

Kathryn James: I go back to my earlier point about the ethos within the school. The way that the school operates within the community is crucial, because

that will bring about a frame of mind. Parents will come into school very angry, something has happened to their child which has made them very angry. Quite often in our members' situation, they need to reassure that parent that they will take their complaint very seriously, sit them down and give them a cup of tea and say, “Okay, let’s not get too agitated about this, let’s sort out what has actually happened and I will deal with it.” If parents have confidence that things will be dealt with, that can defuse a very difficult situation.

Q78 Derek Twigg: So it is about preventing things going further?

Kathryn James: I think it is, in a lot of cases. Parents, when they talk through the issues with the school leadership team that is there, will quite often say, “Okay, he or she does this at home, so okay, but I would like you to look into it.” As long as they are confident that the school treats them with courtesy and also recognising that there is an issue that must be reviewed, parents are reassured and will go away and be content to see the school bring the investigation about.

Fiona Hammans: That is certainly true, but when we look at distraction or malicious allegations, the first you know about it is when you have the schools liaison officer from Thames Valley police, for example, saying, “I need to talk to you, because these parents presented themselves with their child last night and this is the allegation, what are you doing about it?” The local paper already knows about it and that is where you get your rabbit-in-the-headlights, what do I do? Quick, phone the chair of governors. There are two different routes and that is a management issue, as well as the allegation.

Chairman: That is a very good point. Clare?

Clare Collins: I agree with what has been said about the ethos of the school and I think this perhaps refers to something that you were trying to get underneath earlier, Graham, when you talked about deprived areas. I am concerned to see that schools have a good complaints procedure, that parents know about it and that everybody takes it seriously. One thing that comes through all this is that these are allegations made for which there is no substance, but there are allegations made where there is substance. Parents must have confidence that, if they say something has happened, they are not going to get a knee-jerk defensive reaction from the head teacher—“That couldn’t happen in my school.” That is where the ethos comes in: the professionalism of the people at the top really matters.

Q79 Chairman: Yes—we are after good, well managed schools, are we not? Is there any evidence that cyber bullying is common now? We did our inquiry into bullying, as you know, and a very nasty, pernicious form of bullying it is. There has been some suggestion in the media that MySpace and Facebook are used in order to spread a network—“This is what you do if you want to get back at your teacher.” Is there evidence of that, or is it just nonsense?

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

Fiona Hammans: Definitely. I can say from my own school that there is evidence that there can be campaigns from certain groups of youngsters who have taken a dislike to their teacher, and you need to manage it within the school.

Q80 Chairman: Could it impinge on an allegation of abuse?

Fiona Hammans: It certainly could, but it is slightly more complex. It depends on how the teacher finds out that this was up on the internet and how the students were accessing it. We had a very difficult situation in a nearby school where the daughter of a member of staff found something on Bebo about her father, which was very distressing to the whole family.

Kathryn James: It is absolutely on the increase because of the very nature of IT communication anyway. We have just been part of a group working with the mobile phone industry that set up a website to help teachers deal with cyber-bullying either against children or against themselves. Literally things like lesson plans—helping teachers deal with this in the classroom and contain it. Fiona is absolutely right: there are issues that have to be dealt with in school because it can very rapidly get out of hand.

Chairman: Last section questions, very briefly.

Q81 Paul Holmes: Two quick questions. The first one for Nick, and it is going back to the CRB issue. When a request is made for an enhanced CRB disclosure, the Association of Teachers and Lecturers, for example, say that the trouble is that there is no uniformity across all the different police authorities. They all decide, effectively themselves, how are they are going to word the things that are disclosed, and some of the wording can be very damning. What is your experience of that?

Nick Gargan: I think there are increasing levels of uniformity. As with so many aspects of our lives these days, there is no shortage of guidance. We have got legislation, Home Office circulars, and additional supplementary guidance, but the latest initiative which pushes us still further in the direction of standardised products up and down the country is the Quality Assurance Framework. Forces are rolling that out at the minute; indeed, I had my training on my role in the Quality Assurance Framework only the other day. Forms of words and model ways of articulating my decision-making rationale and those of colleagues who are actually preparing the disclosures are part and parcel of that training. So I think we are on a convergent path, but it is the role of the chief officer from time to time to challenge the phrasing of a proposed disclosure. I have dealt with one recently where it implied that a teacher had been suspended permanently, and actually what had happened was that the teacher had been suspended on a temporary basis. The wording of the disclosure was ambiguous, and it is my role to challenge that and make sure we are attaching an appropriate level of weight to the information we are disclosing in order to inform the decision making.

Q82 Paul Holmes: Both ATL and the NASUWT gave examples of wording they have actually seen that basically could have been read to imply, “Well, they were guilty, but we couldn’t actually go ahead with it.” I know I had a constituent a couple of years ago—a youth worker rather than a teacher—who, when they got their check from another police authority in another part of the UK, it actually said in black and white, “There was a serious allegation made against him, we didn’t prosecute, we didn’t take it to court, we didn’t charge him, but he was guilty.” It said that in black and white, and I fought quite a long battle with the chief constable of that authority to get the wording of that altered. You have to flag up where there are dangerous serial paedophiles who might get away with it in different places. We all know the cases that have gone to court about it. You have to flag it up so people can see a pattern emerging. But if the wording actually basically says, “Well, we couldn’t actually prosecute, there was no evidence but he’s guilty,” that has got to be wrong.

Nick Gargan: In my experience, those disclosures that strongly imply guilt don’t do so on the back of no evidence. I have seen those where the victim died prematurely, and therefore the case did not proceed at court. It is as good as saying, “We believe the person to have been guilty, but for technical evidential reasons, it couldn’t be heard in court.” There are several examples where a case might have run out of time or the witness emigrated or whatever it might be. If we have a sense that there was compelling evidence, but an intervening factor that had nothing to do with the guilt or innocence of the accused has meant that the thing was never heard in court, then we will attach some weight to that.

Q83 Paul Holmes: So innocent until proven guilty doesn’t apply?

Nick Gargan: No, we will make the point that they weren’t proven guilty, but we will also make a comment about the weight of evidence. If that’s the case—if we judge it to be the case—we have simply got to try and achieve that very tricky balancing act, which I appreciate will sometimes be controversial or difficult. That is why we put it in the hands of very senior people, who apply great thought and care to it. They would make the sort of disclosure I just described only in the most exceptional circumstances, as the figures indicate.

Q84 Paul Holmes: Clare, the National Governors Association says there is no justification for retaining details on a personnel file of an allegation which is shown to be false. But that is contrary to what the Department for Children, Schools and Families recommends, which is 10 years, or until retirement, whichever is longer. It is also contrary to the advice of the NSPCC, which says of course you must retain these allegations, so how can you square—

Clare Collins: I think what we actually say, where we make it absolutely plain, is, “If an allegation is found to be false it has been demonstrated that it could not have taken place and the member of staff is wholly

17 June 2009 Sir Steve Bullock, Clare Collins, Nick Gargan, Fiona Hammans, Kathryn James and Alan Meyrick

exonerated.” That is what I am talking about—the credibility of the incident in the first place. We would be in favour of a “not proven”. I think what you are talking about is something which is “not proven”. If we weren’t in favour of that, we would be saying that anything to do with safeguarding was a load of nonsense; that the whole reaction to the Soham thing was over top, because that is essentially what happened there.

Q85 Paul Holmes: What about the instances relating to children’s homes? There have been some famous instances in this country and elsewhere, where there were lots of flags or complaints over a 30-year period about serial abusers, but they were never recorded or passed on to other people. Had they been, if you had seen that actually they moved around the country and were exonerated five or six times, you would have seen a bit of a pattern emerging.

Clare Collins: That has absolutely got to be recorded. In my own professional life, many moons ago, it happened to me. I was put in a very threatening position because the person who visited this person before was a man who didn’t feel threatened, but never thought to put himself in a woman’s shoes and consider how a woman would feel threatened. The red star that should have gone on the front of that case didn’t go on the front of it. If that doesn’t happen in response to this, then we are going to have more tragedies.

Chairman: Thank you very much; it has been an excellent session. We have learned a lot and it has been a pleasure to have such a talented group of people. It has been very nice to have a deputy chief constable with us, and wonderful to have an elected mayor from Lewisham with us, along with the tremendously expert group of you that we know and love. Thank you very much.

Written evidence

Memorandum submitted by Mark Jeffery

ALLEGATIONS AGAINST SCHOOL STAFF INQUIRY

- A school in difficult circumstances with serious underperformance and vulnerability.
- A trap is set by a teacher who was underperforming.
- Allegations and smear campaign were planned and well-orchestrated to maximum effect.
- Swift action is taken to discredit myself and all those who are close to me. A smear campaign.
- Step one—union action to bring first allegations escalated to highest level.
- Step two—An independent investigation. Many more accusations.
- Suspension of myself and my wife. Others resign.
- Police investigation—allegations unsubstantiated.
- Compromise agreement.
- Called to account by the Independent Safeguarding Authority. Child protection accusations. unsubstantiated.
- Called to account by GTC. No child protection matters to be accounted for.
- No apology or declaration of innocence.
- I am no longer involved in education in the UK.

MY PROFILE

I was a head teacher. My career began in 1972 as an English teacher in Secondary School. In 1980 I left teaching to do various other jobs, including buying and managing a shop, writing, television production and charity work. In 1989 I became a primary teacher. In 1991 I was offered a senior position in a school in Lambeth, became a deputy head in 1994 and acting head within two years. In 1997 I became Head of a Primary School in Surrey which was highly successful. We gained Investors in People awards twice and received a School Achievement Award in recognition of our outstanding success in SATS results. We were one of the most successful primary schools in Surrey. Our Ofsted inspections were very good as was my leadership and management substantiated by a 360 degree appraisal with the NCSL.

In 2005 I left to lead a school in difficult circumstances. I was 58 when I was accused in 2007. I am married for 36 years with six grown children.

AN AVALANCHE OF FALSE ALLEGATIONS

1. In September 2005 I became Head teacher of a school which had been without a substantive head teacher for over three years. It was at the very bottom of the Surrey league tables. It had many serious issues, including poor teaching, overstaffing, falling role numbers, lack of resources, unruly behaviour, and the largest debt of any primary school in the county. Despite this, the first year was very successful in moving so many issues forward. Two of the poor teachers were asked to leave; new staff were appointed, especially good teaching assistants. Almost everything imaginable in the school needed to be changed, including the uniform and name of the school. The school was under an intensive support programme. I was asked to speak to Heads of other schools about the extraordinary change of fortune for the school.

2. In the second year I appointed some NQTs because of financial constraints, and a mature teacher, Mrs C, who was a late entrant to teaching and recently returned from some years in the USA. This is the teacher who organised the false allegations so easily and with devastating effect.

3. Getting good teachers to work in schools in difficult circumstances is always challenging and I was unfortunate that the quality of the NQTs was not good. Not only that, but it became very apparent early on that Mrs C's own ability left much to be desired. However she was not only a very charismatic person but also wealthy and influential among the younger staff. With encouragement from my external consultant (County and Diocese) I began to challenge some of the poor planning and superficial teaching in her year 6 class. In contrast she thought she was a very good teacher. My guess is that she saw the danger of her being challenged from her first term as she began to make close links to anyone who was discontented or under pressure in their performance, including the NQTs.

4. My consultants encouraged me to challenge her performance more strongly. There were concerns validated by external experienced consultants about teaching performance and failure to implement school policies and procedures. She had not marked her children's books for five months despite warnings. Her response to my challenge was swift and malicious. She met with one of my secretaries and made up to 30 serious allegations about me, including causing the death of a previous Teaching Assistant. My secretary reported the details to me. The smear campaign that started was so outrageous that I was not too worried about the ferocity of the allegations as I assumed wrongly that no one would take them seriously. The next

day she stayed home professing stress, and said she would never come back. But from her home she organised a sustained campaign. She persistently telephoned members of staff. She persuaded six other members of staff (teaching, non-teaching and admin), mainly part-timers, to bring a complaint of bullying to her union representative who acted on behalf of all of them and instigated the County and grievance procedure.

5. This was the first clever part of the strategy. Even though there was no truth in the allegations they were raised to the highest level because of the number of allegations and the number of staff. I was not allowed to talk to any of the members of staff bringing the allegations. This meant that a formal meeting should have been called. I had no problem with that because at least the people bringing the allegations would have to talk to me. My hope was that there would be a resolution.

6. The chair of governors, who was quite new to the role—as were most of the governors—decided to organise an independent investigation through the Diocese of Guildford. Within the normal grievance procedure I would have had a chance to be heard and to present my case. But this changed everything. I was all in favour of transparency. However, the process was anything but transparent. For the next few weeks until the investigation there was an intense campaign organised by Mrs C, who phoned most of the staff to persuade them to join her campaign. Of the six remaining staff who were part of her group, one took sick leave and the others started having “secret” meetings in different parts of the school. They refused to come to the staffroom and met in secret. The strategy in a nutshell was to bring so many accusations that it would cause a virtual whirlwind of panic and confusion.

7. During the investigation interviews an atmosphere was created whereby the investigators were told that I had hidden cameras and recorders in the room, and indeed all over the school. The interviews were of unequal length, questions were not consistent and procedures were not followed as some were only interviewed by one person to save time. The danger of these interviews was that those who were seeking to “give me my come-uppance” (as it was expressed) were able to make incredible and extreme allegations without ever having the danger of being called to account. At least 10 of the allegations were concerning child-protection issues. These were reported to the governors and the LA.

8. The next day I was sent on “gardening leave”. Two days later my wife, who worked at the school was also sent on gardening leave. No reason was given. She was teaching year 3 children but almost all of the allegations were regarding year 6 children, Mrs C’s class. Two other Assistants took their leave immediately and other members of staff followed at the end of the term. The school was in chaos. Within a short period of time my wife and I were formally suspended as “a neutral act” which does not feel very neutral. We were told to hand back our school keys, hand over our computers and forbidden to talk to any member of the school community. This made us feel very isolated and defenceless. At this time I had little idea of the allegations that had been made. It felt as though the perception of my leadership had turned 180 degrees and there was a feeling of many people trying to “protect their backs” especially the LA.

9. There was intense pressure from the LA for me to resign. A police investigation was mounted and my wife was in great fear of a knock on the door and my being arrested. Over the next few months the police found nothing that could be substantiated. Mrs C refused to come forward and give evidence to the police. It seemed her work had been done and she was not wanting to incriminate herself; the same was true of her classroom assistant who helped her to make the accusations. The psychological pressure for me to resign never abated, though I hoped to be able to go back to the school; I had invested so much of my life in the school for the previous two years that I was keen not to let the children and the families down.

10. I was supported by my union rep and an experienced independent consultant who worked in the school. I became aware that my union appeared more keen to get a resolution and so encouraged me to take a compromise agreement. At this point I decided to engage the help of a solicitor. Once it became clear that I was unable to go back to the school, and that I would always have these allegations on my record even if found innocent, I gradually realised I would never teach again. So I reluctantly accepted the agreement after a haggling over the specific amount. Following this my wife was asked to take a compromise agreement. In her case there was no formal accusation against her except that she was married to me and maybe collaborated with me in anything I may have done. She wanted to go back to the school; psychological pressure was placed upon her by the HR department. She was told that everybody hated her. Even though these things were far from true she gave way in the end and resigned, refusing to compromise. She refused to accept any money as she had no wish to benefit from the situation; she just wanted her job back.

11. Other members of staff who supported us gradually resigned or were encouraged to leave. The school faced an Ofsted during this chaos without my presence and in the middle of the confusion that was prevalent at the school. I asked to input data and information to help the school but my input was rejected. Without the data on standards and an account of what improvements had been made Ofsted came to many conclusions which were totally inaccurate, and reflected very badly on myself.

12. At no point was I given the opportunity to meet my accusers. I had no opportunity to sit down with the governors or the LA and defend my case. I lost my job and my wife lost her job. We were left to face the credit crunch without being able to pay our mortgage. So we faced losing our home. Our saving grace was our faith in God, our love for one another and wonderful support from friends and the church. Many of those who went through the experience at the school and know the truth remain our present friends.

13. The irony is that nobody who has investigated the allegations made against me has been able to see the source of these allegations and why they were suddenly raised, when to myself and those of us in the school, including my consultant found it all too obvious.

14. I thought that that was the end of it. One year later I was contacted by the Independent Safeguarding Authority which was now to investigate the matter all over again in order for the Secretary of State to make a decision to bar or restrict me from carrying out work to which section 142 applies. I was devastated. I had assumed that as nothing had been proven and I had accepted an agreement to move on that the matter was finished. For the following three months I gathered all of the evidence I could lay my hands on, even though much was not available to me. I gathered testimonies from people who had known and worked with me all of my life. I presented Ofsted reports and other data regarding my character and achievements. A few months later I heard that the evidence had been presented to the Secretary of State and that in this case no further action would be taken. But all of my details will be kept on record. I still did not feel as though I had been proven innocent.

15. A few months later, almost two years now since the origin of the allegations, I received a letter from the GTC saying that they wanted to investigate my case. It took them a further three months to discover that there was no hard evidence against me regarding any child protection issues. In addition, all of the original transcripts of interviews by the investigators and been inadvertently destroyed. I asked whether I would have the possibility of bringing a complaint against the original teacher, who is now teaching in another local school, and her assistant who is still back in the original school. I was discouraged from taking such an action.

16. And so I and at least two other members of the staff are left without jobs, the school is slowly recovering with new leadership, having lost 25% of its pupils, and yet those who brought the allegations have nothing to answer for. In fact Mrs C. Has a history of this kind of activity having taken action against two principals when in America. She boasted about this in the staffroom when an independent consultant was present.

LESSONS TO BE LEARNED.

1. Take account of the integrity of the witnesses. When taking evidence from witnesses, adults or children, account must be taken of the integrity of the witnesses.

2. It must be recognised that in our modern society it can no longer be assumed that people will tell the truth. It will take great discernment to recognise when people are lying. (Head teachers and teachers are usually very good at this when dealing with disputes between children. A child who has a history of lying does not carry so much weight in an argument against someone who is known for always telling the truth.) Often an accused person with an excellent track record has to stand on equal footing against someone who is known to be an unreliable witness. When a teacher or head teacher has a long and good track record, this should be taken into consideration in the early stages as people rarely have a sudden personality change.

3. Governors, consultants and head teachers need to be trained in damage limitation and to find all ways possible to resolve issues and not to escalate them. Fear of recrimination seems to drive some people to protect themselves by raising the problem to the next level. They need to be prepared and trained to follow correct procedures.

4. There must be early opportunity to challenge the accuracy of accusations, especially when in my unusual case there were so many of them. How can a person withstand over thirty allegations. People are becoming wise as to which kind of allegations are most effective in damaging the victim. Child protection, a most serious allegation, is a case in point.

5. Those who bring serious allegations should not be promised anonymity if the accusations prove to be false. Accountability for all is essential.

6. The accused must also be allowed to produce witnesses. It is not fair that witnesses are only allowed on one side.

7. Witnesses must also be checked for their integrity and motives.

8. The practice of keeping false allegations on the record of teachers must stop. Teachers are entitled to a clean record like everyone else. Innocent until proven guilty.

9. Establish the motive. One of the most obvious things about the dozens of allegations that were brought against me was (a) They all came on or within one month of May 23rd when I had to reprimand the teacher in question. (b) The allegations were all supposed to have happened at different points during the previous year. Nobody on the investigation panels seemed to question why this might have been the case and why nobody bothered to raise any questions at the time of the supposed incidents.

10. Be aware of people wanting to change their position in order to "cover their backs". In my case I received so many positive comments from the LA, the Diocese, parents, governors and the Church. After I was suspended, however, many influential people began to distance themselves from me and thought it prudent not to be closely associated with my past success. Those new perceptions were then fed into the new management and following Ofsted reports as if they were the truth. And, of course, I or those who stood with me, had no opportunity to challenge any of this.

11. Schools in difficult circumstances are particularly vulnerable. Governors, head teachers and consultants should be made aware of this and trained accordingly. Head teachers taking on these kind of schools would benefit by special training from head teachers and consultants who have previous experience.

12. If found innocent the accused should be entitled to an apology and a public statement to that effect.

13. Compensation should be considered.

14. Anonymity for the accused is almost impossible. In my case the rumours were even worse than the false allegations. Anonymity for the accuser is the real issue. It is what makes these incidents more attractive for those who want to bring them; there is nothing to lose.

April 2009

Memorandum submitted by Nigel Morris—Head teacher

ALLEGATIONS AGAINST SCHOOL STAFF

I am the Head teacher in a secondary boys BESD Special school. Our students have complex difficulties and these are often shared by their families as well. We have a high proportion of students who arrive at this school with a history of making allegations against staff; a large percentage who have been abused or there is suspicion of abuse. A large percentage who resort readily to violence and need physical intervention to protect the safety of others. In short, it is the kind of environment where there is a high risk of false allegations. This has to be balanced by ensuring robust procedures to identify those who do behave unprofessionally.

Procedures for the disciplinary hearing are good. Problems arise because of the timescale for reaching this point. In one case it was some 18 months and in a current, more straightforward case, six months. Both cases were unfounded. There should be a clearly defined timescale which should be adhered to unless there is good and documented reason not to.

There should be a preliminary assessment following any allegation against staff and the strategy meeting should have the authority to make professional judgements as well as factual ones.

It appears the Police procedure allows no room for officers to make a judgement about the validity of the allegation. In one case a member of staff allegedly assaulted a student in the presence of other students. None of the students including the alleged victim made any reference to this at the time and neither did their parents (This does not happen when a student is assaulted in front of witnesses) and didn't do until two weeks later the parent of the alleged victim complained to the Police and an investigation followed. The case was dropped after three months and an internal investigation led to no further action. There was a huge amount of evidence at the initial strategy meeting to indicate that this was a malicious allegation. All present agreed that if the allegation had not gone to the Police the strategy meeting would have concluded that no further action was needed but because the allegation was made directly to the Police the member of staff was subject to a lengthy suspension.

It appears that where the Police have a minor allegation against a member of staff that they treat this as low priority and against a murder enquiry this is obvious. The Police are not required to consider the impact of suspension on a member of staff, their family, colleagues and the school community. There should be a dedicated group of officers who deal with allegations and this should be within a fixed, short timescale.

Suspension remains appropriate where an investigation is taking place, however, working away from staff and children should be the norm to allow an initial assessment to take place.

The professional judgement of those with experience of the individuals concerned should be given a weighting.

Where an allegation is false there should be no reference to the case on a person's file. The Disciplinary Panel should have the authority to make a recorded decision on this.

Where an allegation is false the student and any supporters of the allegation should be removed from the school.

April 2009

Memorandum submitted by John Pinnington

My name is John Pinnington and I welcome the opportunity to submit evidence to this enquiry. As a falsely accused and subsequently dismissed deputy principal of a specialist college, I hope my personal account will provide the Committee with a better understanding regarding the nature and consequences of false allegations, the need for just solutions, improved guidance and better investigative practice. When looking at whether guidance to the relevant bodies needs to be revised, I ask that the Committee consider my evidence in respect of the following:

- The Recording/Reporting of Allegations;
- Inter-agency Investigation of Allegations;
- Single Agency Investigation of Allegations; and
- Police Disclosures of Soft Information on CRB Checks.

Also, I hope the Committee's criteria will permit consideration of my submission concerning:

- Absence of Redress for Accused.

In 2005 I was the deputy principal of a college for autistic young adults aged 16 to 25. Following my transfer to a new employer, under Transfer of Undertakings Protection of Employment regulations, I was asked to produce a new Enhanced Criminal Records Bureau (CRB) certificate. The "discretionary" section of this new CRB certificate contained details of three serious allegations of abuse. The wording was shocking and led directly to my dismissal from post. My union solicitors would not support me in an action for unfair dismissal. The allegations made against me were:

1. In 2001 by student X; I was the sixth person he accused of sexual assault.
2. In 2002 by student Y; the son of close friends of X's parents.
3. In 2004 by student Z, the brother of student X.

I have never believed these students were responsible for the allegations made against me.

1. INTRODUCTION

1.1 As the parent of a young adult with severe autism I would like to record my general approval and support for the attempts made to ensure the safety of all vulnerable members of society.

1.2 As a man falsely accused of sexual abuse, I would submit that in the rush to protect vulnerable groups from the perceived threat of abuse, the pendulum has swung too far in the opposite direction. The lack of an appeal procedure available for those subjected to false allegations must be addressed to rectify this imbalance.

1.3 Reading press reports and other stories in the media, it appears that a very high number of false allegations are being made against teachers, often involving disputed information on CRBs.

1.4 The evidence I am submitting is personal to my experiences; however, I believe many of the points will equally apply to other areas of teaching.

2. THE RECORDING/REPORTING OF ALLEGATIONS

2.1 Teachers working with students with learning difficulties and communication problems are subject to additional issues when faced with a false accusation, as there will invariably be a third party involved in the recording/reporting of any such allegation. In other words, it is a parent, carer or other adult who reports the allegation.

2.2 In my case, no investigation considered the reliability or integrity of these third parties, let alone the reliability of the technique by which the young autistic people were making the allegations.

2.3 Each of the allegations against me was made using a technique called Facilitated Communication (FC), a controversial method of communication that has been ruled inadmissible as evidence in court. On the website of the National Autistic Society is a discussion of FC and includes the statement: "Dame Elizabeth Butler-Sloss, President of the High Court Family Division, condemned FC as dangerous and declared that it should not be used by British courts to support or reject allegations of abuse." Dame Butler Sloss made this ruling in 2000, before any allegations were made against me.

2.4 Even if any credence were given in principle to this method, the protocols established by the National FC Steering Group were ignored in each instance. All of the allegations FC'd against me were made with untrained facilitators, and none was validated by an independent body.

2.5 In Facilitated Communication, a facilitator (parent, carer, or other adult), supports the hand, wrist or elbow of the disabled person, in this case the autistic young person, who then spells out words using a letter board. Practised properly, and in accordance with the strict protocols drawn up by the National FC steering group, it can be a valuable tool in the therapeutic education of a small number of speech-impaired people. Howlin (1997) reviewed 45 controlled trials of FC (involving 350 subjects), finding confirmation of independent communication in only 6% of subjects. In more than 90% of cases the responses were found to have been influenced by the facilitators rather than the clients. Crucially, controlled experiments have shown that when different questions are secretly asked to facilitator and young person, so each does not know the question put to the other, it is the question put to the facilitator that is answered. In other words the facilitator is unconsciously influencing the handicapped person. In cases of abuse allegation, this immediately raises the question of what is in the facilitator's mind.

2.6 In the case of the second allegation against me, by Y, it was his untrained mother that facilitated. This was shortly after the parents of X had informed her of the first allegation.

2.7 Despite FC being declared dangerously unreliable, and despite the failures in the techniques used when allegations were made against me, these allegations were subsequently treated as fact by Social Services and all attempts to challenge their validity were ignored

2.8 Just as X had withdrawn allegations against five other people, so his allegation against me was withdrawn less than a month after being made. I only discovered this six years later. Oxfordshire Social Services (OSS) had kept this information secret. I learnt about it after making a complaint to the Information Commissioner regarding OSS when they failed to respond to my request for information. An internal memo disclosed to me had recommended keeping this withdrawal on a “need to know” basis; however, OSS have stated in written replies, that all parties were informed. My employers, my college and Andrew Newland, an independent investigator, (see below) refute this claim.

2.9 Following my repeated requests, OSS finally commissioned Andrew Newland to conduct a review of my complaints. One of his findings concluded that the allegations had been made through third parties using a method of communication known to be untrustworthy. OSS did not accept this or any of the report’s findings.

3. INTER-AGENCY INVESTIGATION OF ALLEGATIONS

3.1 Following the publication in 2000 by the Department of Health, *No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse*, my local County Council, Oxfordshire, set up a multi-agency Oxfordshire Adult Protection Committee (OAPC).

3.2 The Committee comprised representatives from: Thames Valley Police; Oxfordshire Primary Care Trusts; Oxfordshire Mental Health Trust; Oxfordshire John Radcliffe Hospitals Trust; Oxfordshire Learning Disability Trust and The National Care Standards Commission.

3.3 Individual members of this committee passed on damaging material about me to other agencies who then accepted it as true, even though the full committee had not verified the material.

3.4 Without the scrutiny of an OAPC governing body, the representative police officer was able to bring the third allegation to the attention of the OAPC, then, using his position on that committee, to provide a report to his own chief constable. This essentially circular presentation of the facts and allegations, gave the report a veneer of breadth and integrity that it did not deserve.

3.5 I have been unable to establish who is responsible for monitoring or investigating any complaints levelled at this committee and John Howell, my MP, is currently trying to obtain this information for me.

4. SINGLE AGENCY INVESTIGATION OF ALLEGATION

4.1 Oxfordshire Social Services (OSS) at no time conducted an investigation into any of the allegations against me, as in the direct sense I was not their employee. They did however produce a dossier of “evidence” for my employers to consider regarding the first allegation. My employers’ conclusions resulted in them returning me to work, having found the allegations “not capable of belief”.

4.2 The dossier stated that the decision by the police not to proceed against me “should not be taken as justification for assuming that the alleged behaviour has either not happened or is acceptable”. Nowhere in the dossier was there any acknowledgement that I might be innocent, although the OSS officer who compiled the dossier had full knowledge that X had withdrawn his allegation against me.

4.3 This was the first time OSS had responded pro-actively into allegations by X. Previously they had failed to involve the police or request employers to investigate the five other serious allegations made by X against family members and privately employed carers.

4.4 Neither I, nor any member of staff, was invited to submit any information or comments to the content of the dossier.

4.5 I complained to OSS about their handling of the issue, and then, following their own, in-house investigation of themselves, to the Local Government Ombudsman.

4.6 The Ombudsman would not investigate my complaint, as I was “neither service user or carer”.

4.7 Because OSS procedures have no exit strategy, a point recognised in the Newland review, once they adopt a position in relation to an allegation, they have no means of modifying that position.

4.8 When an “independent” review is undertaken, the department being investigated has the final say on whether to accept or reject any findings. In my case there were three such independent investigations, two by my employers—the college where I worked and the supporting charity, and the Newland review. All supported me; none was accepted by OSS.

4.9 The first and second allegations were reported to Thames Valley Police (TVP). I was eliminated from the first investigation, and the second was recorded as “inconclusive evidence”.*

4.10 Following the second investigation I challenged the investigating officer’s actions, and this led to the Police Complaints Authority upholding four of my complaints:

- Failure in Duty (poor and slow investigation);
- Failure in Duty (*Items were not submitted for examination);

- Failure in Duty (No investigation of the [X and Y] link); and
- Failure in Duty (knowingly using an unacceptable method of communication).

4.11 I was denied access to all information regarding the third allegation until the police were forced to disclose it to my solicitor prior to the Judicial Review undertaken in 2008.

4.12 OSS cited this third allegation as grounds for insisting that my employers produce a risk assessment as to my suitability to continue working; they also advised that my employers should ask me to resign my post.

4.13 In 2003 a document, *Allegations of abuse by people with Autistic Spectrum Disorders: Guidelines for Investigating Police Officers*, was produced following consultations between TVP, my employers, the Children in Touch charity, and two eminent child psychologists. This document was the outcome of a meeting that had been convened in response to the mishandled Y investigation in 2002.

4.14 These guidelines, which included contact details of a countywide “expert panel who can be called upon to advise on allegations made by people with [Autistic Spectrum Disorder]”, were accepted and agreed by TVP.

4.15 When considering the Z allegation, TVP disregarded the county panel. Instead, their representative officer on the OAPC approached a registered Home Office intermediary on behalf of the committee. He later used her personal opinions as part of the report he submitted to the Chief Constable in connection with my CRB application.

4.16 Part of this report suggested that when taken alone, none of the allegations was credible, but when viewed as a body of evidence they achieved greater credibility. In court, my barrister pointed out that “three times nothing is nothing”.

4.17 Shortly after TVP informed me of a third allegation against me, Abingdon and Witney College, our franchising college, produced an internal memo marking me as a “High Risk” based on “a presumption of guilt” by OSS.

5. POLICE DISCLOSURES OF SOFT INFORMATION ON CRB CHECKS

5.1 The Chief Constable or officer appointed to complete a CRB disclosure bases his decision on information put before him: he does not investigate, he simply assesses. This information does not have to be hard evidence.

5.2 In my case the information presented was mainly in the form of a report produced by the OAPC police representative, who was also the commanding officer of the policeman disciplined following the Y investigation. This report was partial, distorted and subjective, yet was unable to be challenged at the Judicial Review, as this looked at whether the inclusion of the allegations was fair based on the information available to the presiding officer.

5.3 The inclusion of not only unsubstantiated, but completely false allegations in the discretionary information section of my new CRB led to me being dismissed from post, as my new employers insisted on a “clean” CRB.

5.4 As a legal precedent has now been set by a Judicial Review that sanctioned the inclusion of this type of information, it is highly unlikely that anyone else will be granted leave to challenge allegations included on a CRB.

5.5 Lord Justice Richards in his judgement stated “The legislation imposes a relatively low threshold for disclosure in the certificate in order to enable an employer to make a properly informed decision. But it is important that employers understand how low that threshold is and the responsibility that it places in practice upon them. A properly informed decision requires consideration not only of the information disclosed in the certificate but also of any additional information or explanation that the employee may provide”. Whilst this ruling clearly states what an employer should do, it also implies their actions will follow these criteria. Current experience shows that most employers presented with hitherto unknown revelations, cover their backs by regarding the disclosed information as information the police believe they needed to know.

5.6 The continued inclusion of such unsubstantiated information will contribute to a collapse of the support network and place severe limitations within education recruitment. There is already evidence that men are withdrawing from professional or voluntary roles which expose them to the possibility of false allegation. Civil society is threatened when the balance between protection and safety against truth and justice swings too far one way.

6. ABSENCE OF REDRESS FOR ACCUSED

6.1 Once an allegation has been made it can never be expunged, it can only be challenged.

6.2 It would appear that if, as in my case, an individual continues to protest his innocence and does not let the matter drop, he is branded a serial complainant. When my Local Councillor and my former MP Boris Johnson approached OSS on my behalf they were first told of the number of complaints I had made, then subsequently misled regarding their content.

6.3 Now, any questions I raise with either the TVP or OSS appear tainted by the fact that I have challenged them in the past and have robustly denied their findings. Indeed, it would seem that my persistent fight for justice has compromised my credibility with these organizations.

6.4 Whilst it might be assumed that victims of false allegations are able to pursue those responsible through the courts for libel, in fact, such action is rarely covered by a trade union's legal brief and this, coupled with the absence of Legal Aid, renders this course of action beyond the means of most teachers.

7. CONCLUSIONS

7.1 Once a teacher is acknowledged as the subject of an allegation, gossip and rumour can inflame the situation making it more likely that further allegations will follow. This factor needs to be considered by employers before suspending those accused and thereby legitimising a possibly spurious allegation.

7.2 William Blackstone (1723-1780) in his Commentaries famously stated "Better that 10 guilty persons escape than that one innocent suffer". It appears that the current policy relating to those who have been falsely accused reverses this principle. The policy now appears to be that it is better one hundred innocent teachers be dismissed, than one possibly guilty teacher remain employed. This view is acknowledged in the OSS legal team's advice, where they state it would be preferable to be defending a claim for over zealous actions against me, rather than face a public enquiry for failing their clients.

7.3 This utilitarian policy not only fails those who have been falsely accused, it also fails those who need protection by implying that current procedures are foolproof.

7.4 It is essential that all allegations be taken seriously. This also means that they must be seen for what they are, a possibility, and that BEFORE deciding on any course of action, ALL available evidence from both sides should be weighed carefully.

7.5 This is not the case at the moment when dealing with those people with communication difficulties. The current approach in this area puts a disproportionately high value on the fact that an allegation has been made, rather than its content or the manner and context of its making. Thus, "taking an allegation seriously", is tantamount to believing it to be true, rather than testing it.

7.6 There is a need for an independent body; responsible for investigating false allegations when they arise, as they invariably will, in the current climate. This body must also be able to recommend what action should be taken regarding the accuser/reporter, if they are adjudged to have made false allegations.

7.7 Much of the interpretation, application and enforcement of child/vulnerable adult protection policy is currently carried out by unelected, and in many cases, unaccountable agencies. The quality of these agencies' findings needs monitoring, as their consequences can be far reaching.

I would like to express my thanks to Boris Johnson, John Howell MP and Tony Crabbe, my local county councillor; who have supported me in my attempts to achieve justice.

May 2009

Memorandum submitted by Voice, The Union for Education Professionals

PRELIMINARY COMMENTS

This Union is pleased to have the opportunity to make a contribution to the Committee's inquiry into allegations against school staff.

Children need protection. That is a priority, but those who work with them, both teachers and support staff, are entitled to protection too. We know through our casework that the lives and careers of innocent people have been ruined by false allegations of abuse, even after they have been acquitted of any offence. Being falsely accused and suspended can cause severe personal distress and long-term damage to the accused's career. A large number of our members have left the profession and suffered damage to their health.

In this submission we will respond to the three issues highlighted by the Committee in its brief. We shall also make representations about another matter of concern to us, which is the issue of "soft" information in CRB Enhanced Disclosures.

THE ISSUES

1. *The scale and nature of allegations of improper conduct made against schools staff.*

Comment:

Historically, the problem of allegations against school staff emerged in the 1980s and 1990s. These allegations were predominantly allegations of sexual misconduct and in many cases they were historical. At one time, supporting members who were the subject of these allegations was a major part of our casework. Now, the content of allegations has moved to allegations of physical abuse, eg hitting, slapping, rough handling etc. In recent years the number of these allegations has increased. Also, a new development is the appearance of allegations against school staff on YouTube. We mention this below.

2. *Whether staff subject to allegations should remain anonymous whilst the case is investigated.*

Comment:

We have strong views on this issue.

Publishing someone's name as part of a newspaper story because they have been accused of something but not charged is trial by media. A small paragraph on an inside page weeks later reporting that the charges have been dropped is not acceptable. Mud sticks.

It is time for teachers and support staff to be given some basic rights and safeguards. Among these should be the right to anonymity unless, and until, charged with a criminal offence. This union has called for the necessary legislation to effect this to be introduced as soon as possible.

The issue of general confidentiality is also relevant in this context. Often it is not clear what confidentiality means, who is required to respect confidentiality and how. Practical guidance aimed at all the school community would be most helpful (see 3 below).

3. *Whether the guidance available to head teachers, school governors, police and others on how to handle claims of improper conduct by school staff should be revised with particular reference to:*

(a) *The procedures to be followed by disciplinary panels.*

Comment:

We have a few examples only of unsatisfactory procedures followed by disciplinary panels. There have been potential issues of conflict of interest arising from the early stages of the allegation and the investigation and there have been examples of unfortunate delays in the arrangement of panel dates. It is important that disciplinary panels are kept completely separate from the early stages of the procedure. It goes without saying that panel members will benefit from specialist training.

We can take the opportunity of adding that in our experience there has been a general and maintained improvement in the management of allegations, both at school level and between the agencies. However, there remain inconsistencies in the handling of cases and the implementation of the processes and procedures in the Guidance.

There is, in some instances, a lack of familiarity with actual procedures. For example, we have examples where head teachers are not always aware of the role of the Local Authority (LA) Designated Officer and the need to make immediate contact.

There is certainly a willingness to move through the procedures as quickly as possible and timescales have improved.

(b) *Suspension of the member of staff.*

Comment:

We have observed that there are fewer occasions where a suspension is an automatic response to an allegation and more cases where thought is given to whether suspension is necessary. In maintained schools the key moment is when the school takes advice from the LA. There are some very good LA procedures which explain when suspension is necessary and what the alternatives to suspension could be in practice.

Suspension is such a pivotal moment that it warrants further guidance.

We have had a number of examples of head teachers exercising good professional judgement in consultation with the LA about suspension. The guidance should encourage head teachers to do this, and perhaps include case studies such as remaining at work with certain restrictions, and garden leave. It would be particularly helpful for the guidance to address the concern of some head teachers that if they do not suspend at the start of the procedure they could have problems later on.

(c) *When arresting the member of staff is appropriate.*

Comment:

The decision to arrest a teacher has to be necessary and proportionate. One of our representatives who recently supported a member arrested by the police has written as follows:

- “Knowing that she was to be interviewed under caution, being interviewed under caution and awaiting the result, caused a high degree of stress. Arriving at the police station, being advised of rights, being interviewed with three tape recorders was for her a humiliating process”.

In this case the police took no further action and our representative further commented, as follows:

- “She believed that having been proved to be innocent, appropriate systems would be put in place to redress what had been done to her, but this did not happen”.

In this same case the member has sent us her own comments, which are as follows:

“I received two visits in school from police officers, approximately eight days apart. After each visit I was told that it was unlikely the matter would go further. A sense of unreality crept in, as I was innocent and there was therefore no evidence. I began to lose faith that the process to which I was being subjected would not necessarily produce a just outcome. I felt myself to be a victim here with no control in this matter. I continued to teach the child in my class for a further eight days after the police had reported the allegation to the school before she was moved to another class. If I had not gone to the police station voluntarily, the police officer said that I would have been arrested. Four days later I was notified by the solicitor that the police would take no further action, but when I received written notification from the police of this the wording was “unless further significant evidence is brought to our attention”, ie case not ENTIRELY closed (next month I shall write back requesting notification of complete closure in writing)”.

(d) *Retention of records of false allegations.*

Comment:

We come across confusion about the difference between “false”, “malicious” and “unfounded” allegations. These distinctions are important in relation to the retention of records.

It is our experience that staff perceive child protection procedures as weighted against the accused individual. For example, if a false allegation is made against an individual and it is shown that there is no evidence to substantiate the allegation, there is concern that the allegation stays on the individual’s record with the potential to impact on their careers.

The key issues to be addressed about records are; where they are kept (schools or central LA HR), what is kept, eg what minutes of which meetings, length of time that records are kept, security and who, if any, has copies of any of the documents.

We should add in conclusion that in our view the contents of chapter 5 of *Safeguarding Children and Safer Recruitment in Education* are clear and helpful. The guidance follows the premise set out at the start of this submission, which is that whilst it is important that children are protected, those who work with them are entitled to protection as well. We use this guidance in our casework and for our training and the feedback from our members, both leadership team members and members of staff, has been positive. The guidance will need to be updated to cover the introduction of the vetting and barring scheme and that will be a very good opportunity to review the contents of chapter 5 generally.

The Committee has not asked for comment on the recent and growing number of allegations made on computer technology, such as *YouTube* and *Facebook*. The main difficulty is establishing whether or not an allegation has actually been made which relates to a person’s suitability. There is, in our experience, uncertainty about who should be dealing with allegations made online, and how. The review of Chapter 5 could usefully cover these needs, to be a clear procedure covering who investigates, who takes action if appropriate and the member of staff’s rights.

SOFT INFORMATION

CRB Enhanced Disclosures are a key part of the safe recruitment process and their significance will not decrease with the introduction of the Vetting and Barring Scheme. We have a concern about approved/additional information, known as “soft information” or “non-conviction information”. There is a statutory basis for the chief officer of police to include additional information on a CRB check. This is section 115 (7) of part (v) of the Police Act. Additional information is given on an Enhanced CRB check in a small proportion of cases. We have seen monthly figures for the period October 2008 to March 2009 and in most cases a local force includes this information in less than 1% of disclosures.

The legislation is worded in very broad terms. The test is whether in the chief officer’s opinion any information might be relevant to the application and ought to be disclosed in the Disclosure.

We can give the following scenario as illustrative of our member casework:

Mr X is accused of hitting a child. The matter is referred to the police for investigation. Mr X is interviewed. He denies the allegation. Later he is informed that no further action is taken by the police. He has been suspended from school and he is later reinstated. There may or may not have been an internal school investigation prior to reinstatement. Mr X is not told whether or not the police investigation will be included in an Enhanced Disclosure. Much later he makes a CRB application and finds that this is included as additional information. He is unhappy with the information provided and, in particular, he is unhappy that there is no clear statement that the allegation was a false allegation, as he believes was the case. He raises the matter through the CRB disputes procedure but the information is not changed.

Notwithstanding the wide discretion in the legislation, additional information should be factual, accurate and fair. The process should be transparent and there should be the right to access independent arbitration if the contents are disputed.

We deal with cases where the individual is unhappy about the content of additional information. It could well be that there is good practice in many police force areas. We simply do not know. If there is good practice we would be very pleased for that good practice to be disseminated. It is extremely unsatisfactory, and unfair to an individual, that at the end of his/her contact with the police and/or CPS there is no way of knowing whether that contact will be later placed on record as additional information.

May 2009

Memorandum submitted by Mick Madden

INQUIRY INTO ALLEGATIONS AGAINST SCHOOL STAFF

As a member of the public and as someone who has raised the injustice of the present system in relation to allegations against staff in schools in other areas, I would ask that you take up this issue with the Select Committee.

Although my own case is slightly more complicated than most, I have worked in schools for 27 years and am aware of some of the many shortfalls in the systems set up to deal with such allegations.

I have outlined below my general comments in relation to the terms of reference of the Children, Schools and Families select committee Inquiry. I have then added a number of specific points to my own case which I hope will be helpful.

1. *Scale and nature of allegations of improper conduct made against school staff*

- Not really able to comment on scale of problem except that there appears to be many more cases than ever.
- Many of these cases are trivial, unfounded and/or unlikely.
- These now also involve a wider range of staff than just teachers as more jobs in schools are taken on by support staff.
- We need to be clear what is improper conduct in these cases. Breaking the law, abusing or harming children etc. Needs to be defined clearer with a range of agreed and more appropriate responses.
- Severity of allegation needs to be considered on a case by case level.
- Trawls for negative information should be outlawed and persons contravening this should be held individually liable.

2. *Should staff subject to allegations remain anonymous?*

- Definitely, although this is not always possible as many people will be aware of the problems. Human nature is often “there is no smoke without fire” and within communities like schools people talk.
- Investigations go on for an unreasonable period of time.
- Staff, pupils and families may need to be aware of what is happening in terms of the process and that “it is a neutral act” to suspend. This is often not made clear and rumours occur.
- The accuser and accused need to understand the importance of retaining the confidentiality while matters are being investigated.

3. *Is the guidance adequate or should it be revised in relation to:*

3.1 Procedures for Disciplinary panel

- Procedures are wrongly based on the presumption of guilt.
- All information is not always available to the accused.

- Time limits are far too short in terms of preparation time.
- Pre-hearings might be considered as a way of establishing background information and what additional evidence may be needed.
- In the case of serious allegations the accused should be able to take a legal representative to the hearing to speak on their behalf as well as a union representative or colleague from work.
- Panels should be allowed to make their own genuine decisions without pressure from LA's or others.

3.2 When is suspension appropriate?

- Where serious allegations have been made that may lead to legal action.
- Where others are likely to be hurt or injured further.
- Where it is alleged there has been systematic misconduct (physical, sexual or emotional).
- Where others may be involved and it is important to preserve evidence.
- Only in a small number of cases. There should be a clear understanding of why the decision to suspend has been taken and an opportunity to challenge this before any investigation/hearings take place.
- All other available options should be pursued first.
- There should be a strict time limit and clear updating of information to the suspended person and their representative (at least monthly).

3.3 When is arrest appropriate?

- Police should only arrest a staff member when a serious complaint has been made, it is seen to be plausible/possible and has a likelihood of the law being broken and could reasonably lead to prosecution. Evidence should be gathered from complainant and witnesses before any arrest.
- Arrest should not be seen as automatic procedure as appears to be the case.
- Good reason should be given for the decision to arrest and this should be approved by a senior officer.
- Head teacher should be asked for their view.

3.4 Should records of unfounded allegations be retained?

- No, a clear decision should be reached in each allegation as to whether records are to be retained or not.
- If records are to be retained this should be for a specified period and for specified reasons.
- Professional associations and CRB could be informed of allegations but this information should not be used against individuals unless a case is proven.
- There should be an appeal/review process where records retained can be reconsidered at time intervals.
- Only people found to be a risk to children should be considered for inclusion on any lists.
- There should be a right of appeal for inclusion on any risk and regular reviews.
- Only records likely to be helpful in future prosecutions should be retained.
- Cases that do not hold weight or are not proven should be dismissed.
- Unfounded allegations should not be used to hound people.

ADDITIONAL ISSUES RELATED TO MY OWN CASE

- NSPCC commissioned by LA to carry out a wide ranging inquiry following an allegation against the Head Teacher. It is my belief that this was the wrong body to carry out such an inquiry as this was predominantly an issue of management and interpersonal skills.
- A trawl of information was carried out against specific staff (including myself as the Designated Person for Child Safeguarding).
- I was not allowed access to the NSPCC report (and still have no access).
- I was suspended (neutral act!) several months later on the suspicion of Gross Misconduct.
- I was not allowed contact with colleagues, pupils or their families.
- Access to information on pupil files was difficult to obtain.
- LA did not hold data on referrals etc, so it was difficult to prove what actions I had previously taken in relation to Safeguarding.

- A Gross Misconduct hearing was held by the governors but they were instructed to withdraw by the LA as they (as well as the LA) were implicated in my defence).
- The case against was presented by the LA.
- A reconvened hearing took place.
- The LA selected a new team of Governors from other schools (different type of school).
- The LA presented the case against.
- The LA representative advised the panel, questioned witnesses and myself.
- The policy obliged the panel to accept the advice of the LA representative or risk being held individually liable for any future claim.
- I had to try and prove myself innocent without access to the same range of information or resources as was available to the LA.
- My union was less than supportive and were felt to be embroiled with the LA in allowing such an unfair process to run its course.
- I was dismissed from my job for procedural and administrative errors.
- No restrictions were put on my ability to work with children.
- No one had been hurt or injured by my actions or inaction.
- No previous complaints had been made or any actions taken against me in 27 years of impeccable service.
- I had no formal or informal supervision.
- I had taken on several additional roles to assist the school and children (including running the school for 10 days).
- I lodged an appeal.
- I successfully applied for and gained a more junior role at a local mainstream school.
- The LA (HR dept) had assisted the acting head of my previous school to prepare a reference.
- I was effectively forced out of this role by the LA putting unfair and undue pressure on the Head Teacher and Governors to reverse their decision to employ me. The Head was threatened with suspension.
- I resigned to save any further upset or pressure being exerted.
- An appeal was set up and on the day of the appeal I had a letter from the Independent Safeguarding Authority to say the LA had referred my case for consideration as to whether I was safe to work with Children and/or vulnerable adults.
- An appeal was held and I asked the panel (management board of the school) to make a judgement once they had heard the case on my ability to work with children and/or vulnerable adults so that they could guide the LA.
- My appeal was turned down after lengthy deliberation and strong advice from the LA.
- The panel were not allowed by the LA to make any recommendation on my ability to work with children.
- The chair of the new Management Board of the school met with the panel members and requested a meeting with senior LA representatives to inform them that in the view of the Board no restrictions should be placed on me working with children or vulnerable adults.
- The school that appointed me on a junior role were then made the subject of an inquiry into the process of appointment, child protection and governance.
- The school visited by a small team of individuals who interviewed staff, pupils and governors and the verbal feedback was very positive and the school were reassured that everything was in order.
- Some weeks later the LA again contacted the Head Teacher to say they wanted to revisit and this time tape record the interviews with himself and each of the selection committee involved in my appointment.
- The team revisited, interviewed the Head on tape and a number of others were re-interviewed but refused to be taped.
- They await the outcome.

Sorry to be so lengthy in my submission but I am sure you can see why I feel unfairly victimised by what is supposed to be a fair and transparent process seeking to establish the truth.

Please feel free to use all/or part of this letter in your work with the Select committee.

May 2009

Memorandum submitted by Andrew Walker

EXECUTIVE SUMMARY

- Staff of EBD Special Schools (Emotional Behavioural Difficulties) experience a higher incidence of allegations due to the nature of the difficulties the children are experiencing. Children in these schools are not naughty, they have serious medical and social problems.
- Guidance concerning allegations against Staff at EBD Special Schools must include arrangements that take into account the specific difficulties faced by school staff, in particular the increased risk of false allegations.
- The formal meetings within the child protection processes must include the opportunity for the Headteacher of the accused staff member to be supported by a School Governor. Where the Headteacher is accused, there should be the provision of independent support for the Chair of Governors.
- The timescales for the investigation process for providing the evidence for any remedial or disciplinary action need to be reduced. The first Strategy Conference should be held within 36 hours of the accusation, irrespective of working days or working times.
- The current guidelines identify “Suspension” of the accused as a neutral event. It is not; it has multiple side effects on the school and can be what the child making the accusation sees as a “win”, which then becomes a threat to other staff. In this case, suspension is not in the best interests of the child nor of the other children in the school.
- Alternatives to suspension must be available to the authorities involved and explicitly identified as possible alternatives for consideration in every case.
- The current definition of outcomes needs revision to include a category between “malicious” and “unfounded”. This new category is needed because there are occasions where the child may believe the accusation, but it can be shown that the incident could not have taken place.
- Where an allegation is subsequently proven to be false, malicious or unfounded, consideration must be given to introducing a facility to remove an allegation from the record of the accused.
- Much more consideration needs to be given to the possible actions to be taken with the child in cases of false accusations.

The nature of allegations of improper conduct made against school staff

1. The pupils attending EBD (Emotional and Behavioural Difficulty) Special Schools are severely damaged by their life experience and often have inappropriate knowledge that is beyond their physical years. In addition, they lack an understanding of social norms.

2. Extensive staff experience suggests that to some EBD pupils, making an allegation against an adult is a way of gaining power over their environment. Therefore, the reaction to the accusation may be more important to them than the accusation itself.

3. It should be noted that staff in EBD Special Schools are frequently subjected to physical attack by the children and the approved “Team Teach” form of de-escalation techniques do include the appropriate techniques of physical restraint. Some allegations have been made by people observing the use of these restraint techniques.

4. The revised guidance must recognise the extra risk of potentially false allegations that are inherent in educating these children with Emotional and Behavioural Difficulties that attend these EBD Special Schools.

The scale of allegations of improper conduct made against school staff

5. It is difficult to obtain information about the number of allegations against school staff as the outcome of such allegations is confidential. Furthermore, whatever the outcome for the staff involved, they prefer to move on beyond what is a traumatic experience.

6. The situation in EBD Special Schools is equally difficult to identify, but confidential research within the EBD schools in this county shows that one accusation against a member of staff or a head is received on average every 18 months.

7. We have attached a confidential¹ appendix on the 15 allegations made in our own Primary BESD Special over the past 14 years.² Of these, nine have subsequently been proved to be false by confession of accuser or their parent (three of these may have been malicious), four were defined after in depth investigation as “unfounded”, one was withdrawn by the parent and a recent case has just been concluded as unfounded.

8. There needs to be a record of the number of allegations against staff with particular reference to education phase and type of school. This needs to be supported by a record of outcomes against agreed definitions.

Should staff subject to allegations remain anonymous while the case is investigated

9. Under current arrangements, staff may not even know that they are under investigation. This is intended to limit the opportunities for tampering with potential evidence in the event of a police enquiry. In effect, this only serves to prolong the internal investigation.

10. In practice, as soon as a member of staff is suspended, questions are asked about the reason. Officially, the anonymity might be retained for a short period, but in a small community like a school, other staff and parents find out who is being interviewed and draw their own conclusions. Furthermore, anonymity cannot be maintained when witnesses are sought.

11. In a school community, it is frequently the children who discuss the accusation, especially if a suspension is involved. In one case, a seven year old was heard saying “I will get you suspended” to the Headteacher.

12. The preservation of evidence is essential if a police investigation is required, but the requirement for this investigation should be identified or discounted by the First Strategy Conference.

13. The name of anyone under investigation should be disclosed if any action is taken within the school, and the progress of any investigation should be reported to the staff. The details of the accusation should remain confidential in order to protect the evidence.

Guidance on the procedures to be followed by disciplinary panels

14. The current guidance calls for a formal Strategy Meeting at the earliest opportunity in order to consider a course of action. Our experience is that the outcome of this meeting is predisposed to suspension of the accused.

15. However, the effect is that the accused is tried in their absence, and then “imprisoned” in a “suspension” without even being told the nature of the allegation. This seems contrary to natural justice.

16. The current guidance includes a facility for the employer to provide counselling and support to anyone under suspension, but these “counsellors” are required to report to the investigating team anything that might be of relevance to the investigation.

17. The investigation then proceeds with the Local Authority as Investigator, Prosecutor, Judge, Clerk and Jury. Occasionally, an external “independent” investigator may be appointed. From our own experience and other research, external investigators used by Local Authorities, tend to be drawn from organisations that are built on a presupposition of adult guilt, or are ex-employees of the commissioning authority.

18. We have found within our own county that “confidentiality” and “data protection” is used to prevent the distribution of evidence to the accused or their representative. Therefore the accused is unable to challenge any evidence or its interpretation. The same terminology is also used to obscure any assessment of the probity of the Local Authority actions after the event.

19. Unfortunately, the only people with sufficient experience to raise a concern about the probity of the process are those least able as they have either been dismissed, or returned to work and dependent on the Authority to retain work. Even where an industrial tribunal finds unfair dismissal, there are no arrangements for holding the Authority to account for its actions.

20. The revised guidance should include an extended list of those allowed to attend the Strategy Meetings as follows:

- (a) where an accusation is made against a member of staff, the Headteacher attending Strategy Meetings panels should be supported by a Governor of the school; and
- (b) where an accusation is made against the Headteacher, the Chair of Governors should be supported by an experienced Chair of Governors or a representative from a Governors’ Association.

21. The revised guidance should provide for a wholly independent counsellor to any accused. This should be in addition to the support given by their Trade Union Representative as part of any disciplinary process.

22. Any external investigation should be commissioned by the governing body of the school and report should be delivered to the governing body.

¹ This is confidential as it might be possible to identify the children, the staff or the school from the data.

² Not printed.

23. The revised guidance should include the facility to review the processes followed by the Local Authority and the quality of advice it provided.

24. To support effective investigation, the guidance needs to include reference to the retention of CCTV and any other IT evidence, and the protection from accidental erasure or potentially unhelpful editing.

The guidance on when suspension of the staff members

25. Contrary to the statement in the current guidelines, “suspension” is not a “neutral act”.

26. Suspension of the staff member is currently seen as the only possible response to an allegation. Where the allegation is false, the effect of the suspension is to achieve the goal of the accuser.

27. In EBD Special Schools there is a higher risk of allegations because of the circumstances of the children’s lives. Following careful consideration of the 15 allegations in our school, we believe five were misplacement, three were possibly malicious, six were unfounded, and one was withdrawn by the parent when they found the child was not telling the whole truth.

28. In all these cases, the use of suspension had not helped the child:

- (a) with the malicious accusations, suspension has provided these children with a power over the staff;
- (b) with misplacement; the suspension has focused attention of the school environment and masked the home environment from any investigation; and
- (c) where the allegations were unfounded, suspension has still undermined the confidence of the staff dealing with these very difficult children.

29. Overall, any suspension undermines the best interests of all the pupils. Even one or two day suspensions, cause a deterioration of all the relationships within the school.

30. The revised guidance as applied within Special Schools must:

- (a) include reference to the assessment of the risk of false allegations;
- (b) provide for flexibility in the initial response depending on the nature of the allegation; and
- (c) recognise suspension as a last resort rather than the first and only action possible.

The retention of records of allegations found to be false

31. Currently, all allegations remain on the personal records of the staff involved whatever the outcome. Even where other parties have been identified as causing the injuries alleged to have been caused by the staff member, the record of the accusation remains on their personal record.

32. Any revisions to the guidance must include the facility for any staff member to require all accusations proven to be false, unfounded or malicious be removed from their personal records.

33. There are children who have been risk-assessed by various professionals as having a potential to make false or malicious allegations. Such risk-assessments should be recorded alongside any allegations retained on personal records

34. The records of all actions related to an accusation should be available to the accused upon request. Currently, these records are “confidential”, thus preventing the accused from knowing all the evidence being considered against them.

May 2009

Memorandum submitted by the Association of Teachers and Lecturers (ATL)

- ATL is a union that has a membership of 160,000.
- The membership is made up of teachers, lecturers and support staff.
- Members work in the four to 19 age group in the private, maintained and independent sectors.

1. The scale and nature of allegations of improper conduct made against school staff.
2. ATL members report that allegations of improper conduct cover a wide spectrum including allegations of verbal or physical abuse.
3. In a recent survey conducted by ATL 50.2% of respondents said that they knew of a colleague who had a false allegation made against them.
4. Anonymity of staff subject to allegations.
5. It is ATL’s view that anonymity should be preserved up to the point of criminal charge. Whilst investigations are being conducted in situations where an individual has been suspended then anonymity underscores the principle that suspension is a neutral act. It is recognised that anonymity within a school setting is difficult but employers should not make contact with or respond to the media in such a way that anonymity is breached.

6. Should guidance be revised?

7. The Guidance used by head teachers, school governors, local authority and police can currently be found in the *Safeguarding Children and Safer Recruitment in Education* Guidance of January 2007. That Guidance needs to be revised generally to take account of the provisions of the Independent Safeguarding Authority (ISA).

8. Specific paragraphs in the Guidance in 'Chapter 5 Dealing with Allegations of Abuse Against Teachers and Other Staff' need to be revised in light of its application in practice.

9. Para 5.2—A monitoring procedure needs to be established to ensure compliance and to comply with the provisions of the ISA.

10. Para 5.3—The paragraph needs updating to take account of the revised lists with the introduction of the ISA.

11. Para 5.6—Should include a requirement that the Local Authority Designated Officer (LADO) be obliged to keep individual informed of progress of review meetings. Cross reference with Para 5.12.

12. Para 5.7—Schools should be explicitly required, save in exceptional circumstances, to maintain confidentiality up until the point at which an individual is charged.

13. Para 5.10—Provision must be made for an individual to correct any inaccuracies regarding an allegation contained in their personnel file. There should be guidance to ensure a uniform way of schools applying such a provision.

14. There needs to be a revision of the way in which the Criminal Records Bureau records enhanced disclosure. Currently each local police force records what they consider relevant to the post an individual applies for. There is no uniformity in the type or manner in which a local police force records details of an allegation. To ensure uniformity guidance should be provided for local police forces on the information to be included in an enhanced disclosure form. Templates could be drawn up that show specific outcomes. Templates could ensure a consistency of record keeping, irrespective of geographic location.

15. Para 5.11—The experience of ATL members is that an inordinate amount of time can lapse between either the allegation being made and referral to police and between the end of a police investigation and the conclusion of an internal school investigation.

16. Monitoring should take place to ensure that the suggested time scales in the Guidance are being complied with.

17. Para 5.12—The experience of ATL members is that the Designated Officer does not keep individuals informed of progress of developments. The Guidance needs to be revised to include an obligation on the Designated Officer to keep the individual informed of the progress of their case.

18. Para 5.14—ATL members report that it is not rare for employers to refer matters to the police and/or social services. In a recent ATL survey out of those who were referred to the police 82.1% resulted in no further action after the initial police interview. The decision to refer to the police is a school based one

19. Para 5.17—ATL's members have expressed concern about the impact on them of having to deal with defending a false allegation made against them. It would assist if the Guidance gave examples of false allegations and drew up a flowchart of the steps an employer should take when faced with any type of allegation. The steps will differ depending on whether the allegation is demonstrably false or unfounded or not.

20. Para 5.25—A monitoring process needs to be established to ensure that the local authority designated officer is regularly reviewing cases and monitoring progress. An individual who is the subject of an allegation should be included in the list of people/organisations that the LADO should liaise with.

21. Para 5.34—The Guidance should require that a clear record be made in the personnel file of the individual who is the subject of the false allegation, that the allegation was false and of the action taken against the individual who made the false allegation, and if no action, why not.

22. Para 5.41–5.43—The experience of ATL members is that the timescales are not being complied with. The Guidance needs to ensure that there is an adequate system of monitoring compliance.

23. Para 5.49—Guidance needs to be revised to take account of the ISA.

May 2009

Memorandum submitted by the NSPCC

SUMMARY OF RECOMMENDATIONS

- The NSPCC agrees with and endorses current media reporting guidelines from the Association of Chief Police Officers (ACPO) which state that information about someone under investigation should not normally be released to the public unless and until the person is charged with a criminal offence. The NSPCC believes that extending anonymity to the point of conviction could provide less protection for children and young people in schools. The NSPCC recommends:
- All governors should have training and support on how to deal with allegations and disciplinary procedures. This should include support from local authorities, for schools within and outside local authority control, on how to establish disciplinary panels to manage allegations.
- The suspension of a staff member against whom an allegation has been made should be left to the discretion of the school during an investigation. In deciding when to suspend a staff member, the protection, safety and best interests of the child at the centre of the investigation should be paramount.
- The guidance on the appropriate time to arrest a member of school staff should not be changed.
- Schools should designate allegations as either “unfounded”, “unsubstantiated” or “malicious” rather than using the term “false” which suggests that the allegations are of no further concern and should be disregarded.
- Schools and staff responsible for dealing with allegations made against school staff should be familiar with the guidance for the barring decision making process developed by the Independent Safeguarding Authority.
- Guidance on managing allegations, which is currently being consulted on by the DCSF shortly, should state that any allegation relating to a child protection concern made against a staff member or volunteer, whether or not it has been found to be malicious, unsubstantiated or unfounded should be kept whilst that person is still employed by the school where the allegation was made and also referred to a central point in the school’s local authority.
- Any allegations made against staff in independent schools should also be held by the school and referred to the local authority within which the school resides.

1. GENERAL COMMENTS

1.1 We welcome the opportunity to submit evidence to the Children, Schools and Families Select Committee inquiry into allegations against school staff. This is a complex and controversial area which the Department for Children, Schools and Families has attempted to tackle over recent years.

1.2 The starting point of this debate must be putting the child’s best interests at the centre and ensuring a system that protects children and enables them to come forward. Every child has a right to be safe and protected, a right to be listened to and a right to be involved in decisions which directly affect them as stipulated in Articles 3 and 12 in the *UN Convention on the Rights of the Child*.

1.3 The events of January 2006, when a number of sex offenders were found to be working in schools, underline how important it is to ensure that schools have a culture of vigilance and a child protection mindset.

1.4 Alongside the guidance we recommend the introduction of measures in schools and other settings to help reduce the risk of false allegations. These should include safeguarding policies and guidelines covering one to one meetings with children and young people and what constitutes inappropriate behaviour and the introduction of value based interviews into the recruitment and selection process to do everything possible to minimise the risk of recruiting unsuitable people to a school setting. Child Protection training, which is a key component of teacher training, can also provide school staff with the confidence and expertise to deal with any allegations that may arise.

2. THE SCALE AND NATURE OF ALLEGATIONS OF IMPROPER CONDUCT MADE AGAINST SCHOOL STAFF

2.1 *Scale of allegations*

In 2007–08, ChildLine received 68,758 calls about physical abuse, sexual abuse, emotional abuse, unspecified abuse, school problems and bullying. Records show that in 11,705 calls the perpetrator of the abuse was unknown. However, a collation of the number of calls on this issue show that 1,491 children counselled, a teacher was identified as the perpetrator of the abuse. This figure (1,491) includes all calls where a teacher was mentioned as the perpetrator of abuse and could include repeat callers or calls which do not appear genuine in their presentation. The figure also only includes the number of children and young people

who positively identified a perpetrator of abuse, many did not; thus the actual number of children and young people abused by a teacher or another member of the school staff could potentially be larger. We would be happy to provide the inquiry with a more detailed analysis of calls upon request.

2.2 Nature of allegations

The calls from children and young people to ChildLine highlight some of the abusive and improper conduct by staff in the education service. These range from emotional, psychological and physical abuse and bullying to sexual abuse and serious violent sexual crimes including rape. For example:

“My teacher is being horrible to me, I don’t know what to do—he keeps picking on me. He keeps saying “I don’t like you”. It has been going on for a couple of weeks. It is making me feel sad. It happened again today. He shouted at me and smacked me.”

“I’m being hit by a teacher. I’m being smacked, punched. I’m not telling any teachers because they don’t believe us. I’ve already told people but they’ve done nothing.”

“I am 15 and I have been raped by my teacher. I feel scared. I don’t want anyone to know.”

Other calls from young people state that:

“A teacher has been texting me for months and has given me detention for no reason. The teacher has been chatting me up and touching me. Last time he asked me to have sex with him. I’m afraid to tell anyone.”

“The headteacher hit me on my head. I don’t want to tell my parents as they will not believe me.”

“My teacher keeps me behind in class and is trying to have sex with me. He calls me his ‘special student’”.

“My teacher is telling me that I am always going to be a failure and that I am not bright. It is really depressing me”.

“I was raped by my teacher last Friday. I haven’t told anyone about it. There is no-one that I can talk to”.

3. WHETHER STAFF SUBJECT TO ALLEGATIONS SHOULD REMAIN ANONYMOUS WHILE THE CASE IS INVESTIGATED

3.1 Current media reporting guidelines from the Association of Chief Police Officers (ACPO) state that information about someone under investigation should not normally be released to the public unless and until the person is charged with a criminal offence. The NSPCC agrees with and endorses this guidance. We do not believe that extending anonymity will improve safeguarding or protection for children and young people in schools, as it could send out a message to children and young people that genuine allegations will not be believed.

3.2 We have not found any evidence to show that teachers are any more likely to have allegations made against them than any other professional who works with children and young people. Introducing this change for teachers and education staff would thus create a two-tier system and potentially have serious implications for the anonymity of other perpetrators in other professions who work with children and young people of abuse.

3.3 We do not agree with proposals put forward by some teaching unions that school staff should remain anonymous up to the point of conviction. The starting point of this debate must be the child’s best interests. We need a system that protects children, enables them to come forward to disclose abuse and enables the fullest consideration of the allegation. Importantly, the current system allows the potential for more witnesses to an incident or other instances of abuse perpetrated by the same individual to come to light.

3.4 It is very difficult for children to bring a successful prosecution against people whom they know well and relatively few children make allegations about abuse. For example, latest available figures show that in 2006 in England and Wales only 38% of individuals who were prosecuted for the rape or attempted rape of a child under the age of (a) 13 and (b) 16 received a conviction.³

3.5 Anonymity beyond the point of charge could result in fewer successful convictions, as it would remove the potential for bringing forward more witnesses to an incident and/or others who have been abused by the same person.

3.6 The NSPCC recommends that allegations of abuse need to be dealt with robustly, quickly and efficiently. Safeguarding children and young people requires broader action including a culture of vigilance about risks to children and clear understanding about appropriate interaction with children, challenging unacceptable behaviour, providing examples of good conduct and ensuring children know who they can turn to if they are being abused. We also recommend that value based interviewing should be implemented and used in the selection and recruitment process to recruit school staff who support the safeguarding agenda in protecting children from harm and minimising the risk of recruiting unsuitable people to the school.

³ Court proceedings database—Criminal Justice Evidence and Analysis—Office for Criminal Justice Reform.

4. WHETHER THE GUIDANCE AVAILABLE TO HEAD TEACHERS, SCHOOL GOVERNORS, POLICE AND OTHERS ON HOW TO HANDLE CLAIMS OF IMPROPER CONDUCT BY SCHOOL STAFF SHOULD BE REVISED, WITH PARTICULAR REFERENCE TO:

(a) *the procedures to be followed by disciplinary panels*

4.1 Evidence gathered from NSPCC practitioners and staff with expertise on managing allegations suggests that the current procedures for handling claims of improper conduct by school staff are sufficiently robust and rigorous. The NSPCC recommends that there should be no change in the procedures to be followed by disciplinary panels dealing with allegations made against school staff.

4.2 However, NSPCC practitioners and staff have reported that schools sometimes do not properly implement the procedures set out in *Safeguarding Children and Safer Recruitment in Education*⁴ which can cause distress to the different parties involved. In some cases, NSPCC practitioners have reported that schools have developed their own process for managing allegations made against school staff which have been very lengthy and opaque.

4.3 Schools are often unfamiliar with managing procedures for dealing with allegations. Evidence from practitioners suggests that schools sometimes do not follow procedures set out in guidance issued by the Department for Children, Schools and Families, preferring to develop and implement their own procedures.

4.4 In some areas, such as East Sussex, local authorities are providing support for governors in establishing disciplinary panels and guidance and training on procedures to be followed by disciplinary panels. Governors should have training on how to deal with allegations and disciplinary procedures and support from local authorities on how to establish disciplinary panels to manage allegations.

(b) *when suspension of the staff member concerned is appropriate*

4.5 The NSPCC recognises that suspension of a member of staff whilst an allegation is being investigated is sometimes interpreted as an admission of guilt by the wider school community. However, their continued presence in the school can also be prejudicial to a fair and thorough investigation of the allegation as the member of school staff may still have access to the child or young person who made the allegation.

4.6 Schools can often find it difficult to identify the most appropriate point in an investigation when a staff member should be suspended if an allegation has been made against them by a child or young person, but this should be left to the discretion of the school. However, in deciding when to suspend a staff member, the protection, safety and best interests of the child at the centre of the investigation should be paramount.

4.7 The suspension should be done in a non-prejudicial way and it should be made clear to both the staff member and the child or young person who has made an allegation that there should be no contact between them.

4.8 As mentioned above in paragraph 4.5, suspension of a staff member can sometimes be viewed by the wider school community as an admission of guilt which often makes it difficult for them to return to the workplace if an allegation is unfounded or if there is insufficient evidence to prosecute. It is important that when a member of staff returns to school after an allegation has been declared unfounded or there is insufficient evidence for a prosecution, that it is managed carefully and that both the child or young person who made the allegation and the staff member are appropriately and sufficiently supported. This should include effective communication between all parties.

(c) *when arrest of the staff member concerned is appropriate*

4.9 Arrest of an individual is a policing matter and Section 24 of the Police and Criminal Evidence Act 1984 (PACE) as amended by section 110 of the Serious and Organised Crime and Police Act 2005 (SOCAP) provides a constable with the power of arrest for an offence. The exercise of this power requires the officer to apply the necessary criteria set out in PACE Code G and show that the arrest is necessary.

4.10 PACE Code G sets out the requirements for a lawful arrest. If either of the requirements for a lawful arrest are fulfilled during an investigation then it would be appropriate for the police to arrest a member of staff for further investigation and questioning as necessary to the inquiry. We do not recommend any change to the guidance on when arrest is appropriate.

(d) *the retention of records of allegations found to be false*

4.11 The nature and complexity of allegations made against school staff can mean that allegations can be unfounded, unsubstantiated or malicious, but it is too simplistic to describe allegations which are not criminally prosecuted to be false. Allegations may be unsubstantiated, but this can be because of a lack of evidence or because allegations have been withdrawn by the person who made them. There were nine separate allegations against Ian Huntley—from sexual assault to rape—and all except one were investigated by Humberside Police between 1995 to 1999. The murder of two young girls in Soham by Ian Huntley

⁴ <http://publications.everychildmatters.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DFES-04217-2006&>

demonstrates the importance of retaining allegations which have not been substantiated or unfounded. The case also highlights it is essential that information is shared properly between agencies and that staff who are responsible for this know how to do it and in a timely and appropriate manner.

4.12 The NSPCC recommends that schools should designate allegations as either “unfounded”, “unsubstantiated” or “malicious” rather than using the term “false” which suggests that the allegations are of no further concern and should be disregarded.

4.13 The retention of records of allegations found to be false must be consistent, reasonable and proportionate for all of the parties involved. We recommend that guidance on managing allegations which is due to be published by DCSF shortly should state that any allegation relating to a child protection concern made against a staff member or volunteer, whether or not it has been found to be malicious, unsubstantiated or unfounded, should be kept whilst that person is still employed by the school where the allegation was made and also referred to a central point in the school’s local authority.

4.14 Any allegations made against staff in independent schools should also be held by the school and referred to the local authority within which the school resides.

4.15 The NSPCC operates a system whereby any allegation relating to child protection that is made against either employed staff or volunteer independent visitors is kept on record. We release the information to future employers if we have reason to believe that the individual poses a risk to a child or young person.

4.16 The introduction of the new vetting and barring scheme operated by the Independent Safeguarding Authority in 2010 poses a number of challenges. Specifically, determining how and when “soft” information, such as police intelligence or details about allegations made against school staff which were not referred to the police, should be disclosed and/or where there are (continuing) concerns about the appropriateness of an individual working with children and young people.

4.17 The NSPCC recommends that schools and staff responsible for dealing with allegations made against school staff should be familiar with the guidance⁵ for the barring decision-making process developed by the Independent Safeguarding Authority. This guidance sets out details and clarifies the collection, retention, deletion, use and sharing of information, and when and what type of information should be disclosed and entered into the ISA registration of a member of school staff if an allegation is made against them. Guidance should also be developed for those against whom allegations are made to ensure that the process is transparent and that information is passed on and/or shared with other parties in an open and accountable manner.

4.18 As highlighted above, some allegations are malicious in nature and although this can be distressing for the person against whom they are made, it can also be a cry for help or a sign that a child or young person is being abused at home or elsewhere. There should be full exploration of why the child or young person made the allegation, including an assessment of whether they need any extra support.

May 2009

Supplementary memorandum submitted by the NSPCC

As discussed, I am writing regarding the recent evidence session held by the Children, Schools and Families Committee as part of its current inquiry into allegations against schools staff. I understand that the Committee will not be hearing any further oral evidence on this issue and I am therefore writing to clarify the NSPCC’s position on these issues following the evidence given by witnesses on Wednesday 17 June. Thank you for providing the NSPCC with the opportunity to do so.

1. “FALSE” ALLEGATIONS

The NSPCC recognises that allegations made against schools staff can sometimes be unfounded, unsubstantiated or malicious and that they can be very distressing for the person who is accused. However, the nature of allegations made against school staff are often complex and it is too simplistic to describe allegations which are not criminally prosecuted, or unsubstantiated, as “false”. The NSPCC recommends that schools should designate allegations as either “unfounded”, “unsubstantiated” or “malicious” rather than using the term “false”, which suggests that the allegations are of no further concern and should be disregarded, which can also mean that any underlying reason for the allegation being made is not explored.

It is important to recognise that such allegations can be a cry for help or a sign that a child or young person is being abused at home or elsewhere. There should be full exploration of why the child or young person made the allegation, including an assessment of whether they need any extra support.

⁵ <http://www.isa.gov.org.uk/pdf/GuidanceNotesforBarringDecisionMakingProcessweb.pdf>

2. BEST INTERESTS OF THE CHILD

The starting point of this issue must be the best interests of the child and ensuring a system that protects children and enables them to come forward if they are being abused.

We were particularly concerned by some comments made by witnesses at the evidence session which stated that children and young people needed to have “a clear understanding of the seriousness of the allegations that they might be making”. This comment suggests that children and young people need to be interrogated before proceeding with making an allegation and could send out a message to children and young people that genuine allegations will not be believed.

It is very difficult for children to bring a successful prosecution against people whom they know well, and relatively few children make allegations about abuse. Allegations of abuse need to be dealt with robustly, quickly and efficiently and children and young people must know who they can turn to if they are being abused and that any allegation will be thoroughly investigated. There should be no presumption at any point that the allegation is malicious. Such a decision should only be arrived at once the issue has been fully explored.

3. RETENTION OF RECORDS

We would like to refute oral evidence given to the Committee which stated that there is no justification for retaining details on a personnel file of an allegation which is shown to be unfounded, unsubstantiated or malicious. It is of course very important that the retention of records of such allegations must be consistent, reasonable and proportionate for all of the parties involved. However, allegations may be unsubstantiated, not because they are untrue, but because of a lack of evidence, or because allegations have been withdrawn by the person who made them. There were nine separate allegations against Ian Huntley—from sexual assault to rape—and all except one were investigated by Humberside Police between 1995 to 1999. The murder of two young girls in Soham by Ian Huntley demonstrates the importance of retaining allegations which have not been substantiated or are deemed unfounded. The case also highlights it is essential that information is shared properly between agencies and that staff who are responsible for this know how to do it in a timely and appropriate manner.

The NSPCC operates a system whereby any allegation relating to child protection that is made against either employed staff or volunteer independent visitors is kept on record. We release the information to future employers if we have reason to believe that the individual poses a risk to a child or a young person. We recommend that guidance on managing allegations which is due to be published shortly by the DCSF should state that any allegation relating to a child protection concern made against a staff member or volunteer, whether or not it has been found to be malicious, unsubstantiated or unfounded, should be kept whilst that person is still employed by the school where the allegation was made and also referred to a central point in the school’s local authority. Sometimes it is only when ‘soft’ intelligence of this kind is retained, and put together with other evidence that may come to light, that the risk an individual poses to children becomes apparent.

We understand that the Committee’s report on allegations against school staff is currently being drafted and that there will not be any further oral evidence sessions. However, if it is helpful we would be very happy to facilitate a meeting with one of our practitioners who has detailed knowledge and experience of handling allegations to ensure that the best interests of children and young people are at the centre of this issue.

June 2009

Memorandum submitted by Professor Pat Sikes, School of Education, University of Sheffield and Dr Heather Piper, Senior Research Fellow, Institute of Education, Manchester Metropolitan University

SUMMARY

Over the past six years we have conducted in-depth, qualitative study of the perceptions and experiences of (approximately 15) male teachers, (and their family members and friends and colleagues), who have been accused of sexual misconduct with female students which they say they did not commit and of which they have either eventually been cleared or the case has been dismissed or withdrawn due to insufficient evidence. Some of the people we spoke with served prison sentences, others did not, but all attest to having gone through a protracted and distressing investigation process, which, in their view, was exacerbated:

- by suspension,
- by isolation as a result of prohibitions on contact with colleagues,
- by attempts to maintain the anonymity of the accuser,
- by measures aimed at maintaining secrecy about what was alleged to have taken place, and which
- had continuing repercussions for mental and physical health, and for family members, and
- adversely affected ability to continue working as a teacher, or in any other way with young people, and insult was added to injury because of

— lack of punishment of, and absence of, consequences for their accusers.

1. We want to emphasise that we have undertaken this study as independent academics with backgrounds in researching teachers' and other professionals' anxieties about touching children (Piper and Stronach, 2008; Piper, Stronach and MacLure, 2006) and teacher-pupil consensual relationships (Sikes, 2006). We have written a book based on our findings (Sikes and Piper, 2009—to be published by Routledge, in December, 2009) and this submission reflects its content, arguments, and our experience of researching this critically sensitive topic.

2. Researching allegations which are claimed to be false is not easy. Establishing unequivocal truth, especially when what is alleged to have occurred is usually said to have taken place in private with only the accuser and the accused present, is close to impossible. We are well aware of the difficulties and we did all that we could to satisfy ourselves that the people we spoke with really were innocent of the offences they were accused of. From what we were told, we cannot be certain that this was always the case in the investigations that our informants experienced. However, in every case the investigation was either dropped or culminated in a 'not guilty' outcome. In our book we discuss at length the ethical and methodological issues involved in such research, and the considered choices which we made.

3. The notion that children are always innocent has contributed to the underpinning and guiding principle of UK (and other countries') child protection policies and legislation, to the effect that the starting point of any investigation is the tenet that children never lie about abuse. "Children" is frequently taken to apply to all those under 18 and this generalisation can lead to difficulties since, while it is highly unlikely that a four year old could describe sexual intercourse in detail if they had not experienced or observed it, the idea that a 15 year old who is angry with one of their teachers is incapable of falsehood concerning sexual behaviour is far less plausible. Not only this, but the "master narrative" of innocence and its concomitant premise that children never lie about sexual abuse, coupled with moral panic around paedophilia and child abuse, distorts and sexualises perceptions and understandings. It can lead to teachers being accused of sexual misconduct on the basis of actions and behaviours and comments which had quite another intention and motivation. It also, of course, lays a way open for malicious allegations to be made and believed. Acknowledging this is not, in any degree whatsoever, to suggest that children should not be protected but it does seem that in many places throughout the world, we have now reached a situation where adults in general, and those who work with young people in particular, are frightened of having their innocent actions misconstrued.

4. Attempting to establish that wrong doing has occurred does not and should not require that one party be assumed to be more likely to be telling the truth than the other. In the past the benefit was on the teacher's side, now it is in favour of the youngster. Both of these extremes are damaging and both can lead to contravention of the basic human rights to safety and to justice, which should be enjoyed by both pupils and teachers. In summary, the necessary balance between the rights of the child (and also the entitlements and rights of parents in the school system) on the one hand, and the rights and professional status of teachers on the other, has been tilted inappropriately. The result is that damage has been done to the personal and professional rights and security of teachers, which can only result in higher turnover and lower quality in the workforce. The Committee is urged to address this wider context, as well as more procedural matters.

5. Our book is focused on individual experiences and narratives from those involved in allegations. The research was not funded, and so a systematic enquiry into procedures and regulatory practice was impossible. As a result, in considering the question "How could things be done differently?" we only make tentative suggestions. The following text (italicised) is taken directly from our concluding discussion of these issues and should please be referenced appropriately if used elsewhere (see Sikes and Piper, 2009):

Children and young people of different ages are not a homogenous category and the doctrinaire presumption that children never lie about abuse should be tempered by a contextual assessment of the relevant circumstances surrounding allegation against a professional, which would include the age and known characteristics of the child/young person.

We do not agree that following an allegation a teacher should immediately and automatically be suspended. Suspension is not and cannot be in these circumstances a neutral act: as Lord Justice Sedley, has stated "suspension changes the status quo from work to no work, and it invariably casts a shadow over the employee's competence. Of course this does not mean that it cannot be done, but it is not a neutral act" (England and Wales Court of Appeal (Civil Division), 2007). We suggest, rather, a cooling down period of a day or so where teachers or others who know the child/young person well, are able to talk with them in a non threatening way. During this short period the teacher could still be prevented from having contact with students (as is recommended in DfES, 2004a, but, in our experience, rarely employed) but crucially in a way that does not presuppose guilt. It seems very likely that a number of false allegations could be resolved at this early stage before everyone becomes entrenched in their polarised position, and where a child or young person who has lied and invested so much emotional and social capital in their narrative becomes unable to retract their allegation.

We believe the current system which prevents teachers from talking to their friends and colleagues to be inhumane. A situation can arise where a child who has lied is still able to talk to their friends and get their story “right” but the teacher becomes isolated and disempowered from the start. It is perhaps surprising that any teachers are found not guilty given this imbalance in the treatment of pupils and teachers.

We would wish teachers’ anonymity to be preserved throughout, not just so as to preserve the anonymity of a child but because of the consequences of “no smoke without fire” for subsequent career possibilities, and the vigilante type activity which such naming encourages. We appreciate full anonymity is impossible as children talk, as do parents, but a total ban on reporting could help to keep it local in the first instance (Facebook etc aside).

Our cases suggest that once an investigation is in play, the interests of natural justice are not well served by current procedures. Thus the insights of other professionals, parents and children closest to the situation are not investigated in an open handed way, but rather the priority is to build a case to support a prosecution. In almost every case there is likely to be a sizable contrast between the investigatory resource of the prosecution and the defence, and of course the accused individual is forbidden to have any direct input. Given that verdicts in child care cases tend to be on the balance of probabilities, these realities again make the task of proving innocence that much harder.

We suggest the current judicial processes do not serve the best interests of either children or teachers in these situations. It may be that a process more akin to that which occurs in a family court is more appropriate, where the process is less oppositional and those involved are trained and better able to deal with the complex issues. Only if the need for a full criminal prosecution is then confirmed should the full prosecutor process be applied.

To suggest that a more rounded and even handed investigative process would be beneficial in cases of sexual allegations against teachers (and other professionals in child care settings) should not be taken to indicate a “soft” attitude towards teachers or child protection. Beyond the obvious principled issue of natural justice, and the more pragmatic one which can be summed up as “why in current circumstances would a sane adult place themselves at risk by being a teacher?”, is the fact that a more inclusive process would cut both ways. We may be concerned by stories of the type told to us, but we are just as concerned that actual cases of abuse are identified and dealt with. Current procedures can all too easily miss a pupil’s story which needs to be read between the lines, and can also prove so intimidating that some real cases go nowhere as a more timid child clams up.

Thus, a different type of process could have benefits for both teacher (as individuals and for the profession) and pupils, and also for justice itself. However, if an allegation is proved to be false, we think it is wrong that currently most young people experience no negative effects and are certainly not punished. The length of time the case often takes may be a contributory factor, but pupils should be made aware that there are consequences to their actions, and to allow false allegations to be exempt from normal sanctions sends a clear message that such behaviour is not considered serious and that it is easy to get away with it—it also implies doubt in regard to any “not guilty” verdict. This is not the way to treat professionals who can be considered to have chosen a “risky” vocation.

Our research focused on accusations of sexual misconduct. According to Investigation and Referral Support Co-ordinators data (DfES, 2004b), only around one third of allegations made against teachers fall into this category. In fact teachers are much more likely to be accused of physical abuse and when they are they face the same investigative procedures and the same potentially protracted period of uncertainty and suspicion. Hitting, restraining or in other ways physically hurting children who may themselves have been behaving in inappropriate or unacceptable ways does not seem to incur the same degree of public opprobrium as alleged sexual abuse: the legacy of “spare the rod and spoil the child” is pervasive and tenacious. However, for a teacher accused of physical wrong doing which they claim they have not perpetrated, the consequences for and effects upon their careers and their well being are no different than for those faced with sexual allegations.

6. Finally, we believe that this inquiry would benefit from a consideration of a test case ruling made in relation to nurses earlier in 2009. Four nurses had been suspended from duty and placed on list banning them from working during an enquiry following a complaint about their alleged mistreatment of vulnerable adults under the Protection of Vulnerable Adults (POVA) legislation. However, the Law Lords ruled “that nurses have the right to be heard before they can be suspended from work under the . . . POVA scheme—which has been deemed to be in contravention of human rights” (Staines, 2009). It is expected that this test case will pave the way for at least another 50–100 such cases currently going through the European Court of Human Rights in Strasbourg. Words like “unfair and unjust” and “disproportionate in their adverse effects on the rights of care workers” were applied to the care standards provisions applied to nurses. We suggest that if nurses have had their human rights contravened by such treatment, then so too must have teachers. We hope that the current inquiry and future legal process reaches a similar conclusion.

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Memorandum submitted by the Department for Children, Schools and Families (DCSF)

INTRODUCTION

1. Everyone in the education service shares the objective of helping to keep children and young people safe from harm. Safeguarding children must always be our top priority. It is therefore essential that all allegations are taken seriously and dealt with fairly, quickly and consistently in a way that provides effective protection for children whilst balancing the need to support the person who is the subject of the allegation. We are keenly aware of the effect that false or unfounded allegations can have on a person's health, family, and career. Regrettably, though, some allegations are true. Allegations of abuse can be particularly upsetting, but being abused by a person in a position of trust and authority can have devastating effects on a child.
2. It is rare for an allegation to be deliberately false or malicious. Most practitioners agree that children making malicious allegations may have complex needs and in some cases may be making the allegation to draw attention to abuse or other issues elsewhere in their life.
3. We have been working to ensure that the systems for dealing with allegations are fair, rigorous and timely and strike the right balance between providing effective protection for children against abuse and providing support for staff who may upon investigation be found entirely innocent of the allegations.

PROCEDURES FOR HANDLING ALLEGATIONS

Allegations of Abuse

4. Procedures for handling allegations of abuse made against those who work with children and young people are contained within Chapter 5 of *Safeguarding Children and Safer Recruitment in Education* and Appendix 5 of *Working Together to Safeguard Children*. These procedures apply to all cases where it is alleged that a member of staff (or a volunteer) has:
 - behaved in a way that has harmed a child, or may have harmed 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 s/he is unsuitable to work with children.
5. The procedures were introduced in November 2005 for education staff, and in April 2006 for the rest of the children's workforce. The new arrangements introduced the following:
 - a national standard process built on effective practice;
 - target timescales for each stage of the process;
 - better case management and decision making built on close cooperation between agencies; and
 - better and quicker information sharing, and close liaison between the police and Crown Prosecution Service on criminal investigations.
6. In 2007 the Department conducted a review of implementation of guidance on handling allegations of abuse made against those who work with children and young people. The review gathered evidence on the implementation of guidance through a limited public consultation, interviews with key stakeholders, a data collection from local authorities, progress reports by Local Safeguarding Children Boards and a review of media cases. In brief, the review, which has now been published, concluded that:

- there are no fundamental problems with the guidance itself that would require substantial revision;
- there is a need for more awareness-raising in some sectors to embed the guidance in the wider children’s workforce, and practitioners would like further practice guidance on a number of issues; and
- more work needs to be carried out with police to explore the scope for speeding up investigations once they have left the local authority.

7. Based on these conclusions, we have been taking the following further action:

- carrying out further awareness-raising for sectors of the children’s workforce to which guidance on allegations was new in 2006. This will be through the safe recruitment guidance which is being produced by the Children’s Workforce Development Council;
- improving the training offer for allegations management through inclusion of training on allegations in the National College of School Leadership safe recruitment training, and the online training being developed to accompany the CWDC Safe Recruitment guidance; and
- producing additional practice guidance on handling allegations for practitioners. This was published for consultation on 13 May. The consultation runs until 7 August.

SCALE AND NATURE OF ALLEGATIONS

Allegations of Abuse

8. As part of the review, data on allegations was collected via a voluntary collection from Local Authority Designated Officers (LADOs) in England’s local authorities. The request covered data for the period 1 April 2007 to 30 September 2007. A total of 130 responses were received, of which two were unusable due to data quality. The results referred to below are collated from 128 returns which account for 85% of local authorities in England.

9. The total number of allegations referred to the LADOs based on 85% of authorities was 4,069 in the period 1 April 2007—30 September 2007. These originated from the following employment sectors:

<i>Employer</i>	<i>Percentage (as % of total referrals):</i>
Social Care	13.2%
Health	2.1%
Education	52.0%
Foster Carers	12.0%
Police	1.2%
Secure Estate	2.6%
Other	16.9%

10. These figures reflect allegations being reported across the entire children’s workforce. The majority of allegations are minor and fewer than 10% result in dismissals but it is important that all allegations are handled effectively, including consulting the LADO so that independent consideration can be given and consistency maintained. The number of allegations reported shows that more allegations are being reported to LADOs, as recommended by the guidance.

11. Data was also collected on the nature of abuse broken down by the types of abuse described in *Working Together to Safeguard Children*. This showed the following:

<i>Employer</i>	<i>Physical</i>	<i>Emotional</i>	<i>Sexual</i>	<i>Neglect</i>
Social Care	57.8%	9.5%	27.1%	5.7%
Health	44.6%	3.6%	41.0%	10.8%
Education	61.6%	6.8%	29.3%	2.4%
Foster Carers	58.7%	12.7%	19.1%	9.5%
Police	40.4%	4.3%	51.1%	4.3%
Secure Estate	76.2%	5.7%	16.2%	1.9%
Other	46.8%	6.5%	40.5%	6.2%
Total	58.0%	7.7%	29.8%	4.5%

12. The data shows that on average across agencies there is a higher percentage of allegations relating to physical abuse (58%), followed by sexual abuse (29.8), emotional abuse (7.7%) and neglect (4.5%). Secure Estate had a much higher percentage of allegations relating to physical abuse (76.2%) than the other abuse. Police reported more allegations relating to sexual abuse (51.1%) than physical abuse (40.4%).

ANONYMITY

13. We appreciate that teachers and other education staff feel vulnerable to being identified because of their public profile. Our guidance is clear that every effort should be made to maintain confidentiality. The present system of self-regulation, overseen by the Press Complaints Commission, provides safeguards against the publication of inaccurate or misleading information. The Association of Chief Police Officers has also strengthened its guidance to police forces aimed at preventing people being identified if they are not charged with a criminal offence.

14. The evidence collected during the review suggested that the current guidance on confidentiality is working well. The wide majority of respondents to the consultation experienced no problems with breaches of confidentiality. Out of 96 responses to the consultation all but three requested further guidance and training on this issue, usually related to information sharing, rather than legal anonymity.

15. The review obtained a number of examples of best practice in schools, for example where staff, pupils and parents have been informed by letter of an allegation on the morning that a teacher went to court but confidentiality had been maintained up until that point. The media review revealed very few recent cases of press reporting on allegations before a charge has been made, and we were not made aware of significant cases through the consultation responses or interviews.

16. The Press Complaints Commission also confirmed that it has received very few complaints from people facing allegations of abuse being reported in the press. This suggests that the current arrangements are working well.

DISCIPLINARY PROCEDURES FOR SCHOOL STAFF

17. Local authorities and governing bodies are responsible for putting in place appropriate procedures to deal with grievances, breaches of discipline and dismissal. In turn the governing body is responsible for setting out disciplinary rules and procedures for dealing with a lack of capability on the part of any member of staff employed at the school. They must also have procedures for staff to follow if they have a grievance or complaint about their employment.

18. The capability and disciplinary procedures should be designed to help and encourage staff to maintain standards of conduct, attendance and job performance. A consistent application of these procedures should offer schools, as employers, a mechanism to achieve the required high standards from staff whilst offering fair and equitable treatment, and offer employees protection against unfair action by the employer.

19. These basic principles have been agreed by the trade unions:

A typical disciplinary procedure will have the following stages:

- A formal, oral warning in the case of a minor offence.
- A written warning for subsequent minor offences or a more serious offence.
- A final written warning for further misconduct. The warning should make it clear that dismissal may follow failure to comply.
- Dismissal with appropriate notice will follow if there is insufficient improvement.

LEGAL OBLIGATIONS OF THE EMPLOYER

20. The Employment Rights Act 1996 requires the employer to provide written information to their employees about certain aspects of the disciplinary procedure.

21. All governing bodies of maintained schools have a duty to establish disciplinary rules and procedures and ensure that they are made known to staff. It is the responsibility of the head teacher to manage the disciplinary procedures as part of his or her professional duties and to ensure that proper levels of staff performance are established and maintained.

CODES OF PRACTICE

22. The Advisory, Conciliation and Arbitration Service (ACAS) is empowered to produce codes of practice on disciplinary rules and procedures. These codes provide employers with practical guidance on how to draw up and effectively operate disciplinary rules and procedures. ACAS has recently revised the Code of Practice on Disciplinary and grievance Procedures with effect from 6 April 2009.

23. Breach of the ACAS codes does not render the employer liable to the proceedings, but a failure to follow the code could be taken into consideration by a subsequent Employment Tribunal (ET). In deciding on whether a dismissal is unfair the ET is primarily concerned with the fairness of the procedures followed by the employer prior to a dismissal.

24. ACAS guidelines on what should be included in disciplinary proceedings include the following:

- State the type of action and penalties which can result from unacceptable conduct.
- Have a clear timetable for dealing with disciplinary matters.

- Give full details of the disciplinary offence. Investigate the alleged disciplinary offence before disciplinary action is taken.
- If suspension of the employee during the investigation is considered necessary, it should be for as short a period as possible.
- Allow employee to be accompanied by a colleague or union representative.
- Allow employees to state their case before a decision is made. Unless in the case of gross misconduct, not to dismiss on first offence.
- Provide the employee with the right of appeal. If appropriate, indicate the type of offence that would be considered gross misconduct.

APPEALS

25. The opportunity to appeal against a disciplinary action is essential to natural justice. Appeals should be dealt with as promptly as possible. The time limit usually set for lodging appeals is five working days. Individuals should be informed of arrangements for appeal hearings and also of their right to be accompanied. The individual should be informed of the result of the hearing as soon as possible and this should be confirmed in writing.

SUSPENSION

26. Our guidance sets out where suspension is relevant, although each case will turn on its own facts. Governing bodies need to be sure that they are acting reasonably and have grounds for the suspension and accordingly are encouraged to obtain legal advice where necessary.

27. Suspension should only occur where there is reasonable evidence to demonstrate that the individual's presence at work could be prejudicial to the investigation in any way, or for example if it is necessary to suspend in order to protect children, or is in the public interest. The reasonableness of an employer's action will depend on the evidence in their possession at the time of the suspension.

28. An additional point to note is that the suspension should not be for longer than is strictly necessary. The employer must act reasonably and diligently once the individual is suspended. A failure to proceed promptly could justify an employee resigning and claiming unfair constructive dismissal. Furthermore, alternatives to suspension should also be considered. It may be that alternatives would not be appropriate but it is important to be able to demonstrate and record that alternatives were considered and rejected.

29. The Department's review found that the use of suspension has improved, in the sense that it is being used as an automatic response to allegations less often. However, practitioners said that they would like to see more practice guidance and case studies to help them in deciding whether suspension is appropriate in certain situations. The draft practice guidance referred to in paragraph 7 above contains an annex on suspension setting out when suspension should be considered, alternatives to suspension, the process for considering and managing suspension, and guidance on supporting the individual.

RETENTION OF RECORDS OF ALLEGATIONS

30. Paragraph 5.10 of *Safeguarding Children and Safer Recruitment in Education* says:

“It is important that a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on a person's confidential personnel file, 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 if the person has moved on. It will provide clarification in cases where a future CRB Disclosure reveals information 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 person has reached normal retirement age or for a period of 10 years from the date of the allegation if that is longer”.

31. However, we do intend to amend guidance to make clear that allegations which have been investigated and demonstrated to be completely untrue do not need to be included in teachers' references. This will be done as part of the revisions to *Safeguarding Children and Safer Recruitment in Education* planned to take account of the vetting and barring scheme being implemented under the Safeguarding Vulnerable Groups Act.

Supplementary memorandum submitted by the Department for Children, Schools and Families (DCSF)

Thank you for your letter of 23 June requesting further information for the Committee's short inquiry into allegations against school staff. I will take each of your points in turn.

1. *Please supply a list of guidance produced centrally for those involved in handling and investigating allegations made against school staff (including police officers, local authority staff, school leaders, school governors and others).*

Guidance on Dealing with Allegations of Abuse Against Teachers and Other Staff was first published in November 2005. The same procedures were included in *Working Together to Safeguard Children*, published in April 2006. In November 2006, the guidance was incorporated into Chapter 5 of *Safeguarding Children and Safer Recruitment in Education*. This came into force on 1 January 2007.

Safeguarding Children and Safer Recruitment in Education is aimed at all schools (maintained and independent), FE colleges, pupil referral units and local authorities in their education functions. It replaced a number of documents including *Dealing with Allegations of Abuse Against Teachers and Other Staff*.

Working Together to Safeguard Children is addressed to practitioners and front-line managers who have particular responsibilities for safeguarding and promoting the welfare of children, and to senior and operational managers, in an organisation that:

- are responsible for commissioning or providing services to children, young people, and adults who are parents/carers; and
- have a particular responsibility for safeguarding and promoting the welfare of children.

2. *What is the role of Local Safeguarding Children Boards in dealing with allegations?*

The Local Safeguarding Children Board (LSCB) is the key statutory mechanism for agreeing how the relevant organisations in each local area will co-operate to safeguard and promote the welfare of children in that locality, and for ensuring the effectiveness of what they do. LSCBs must develop policies and procedures on "investigation of allegations concerning people working with children" that are based on the guidance in paragraphs 6.20–6.30 and Appendix 5 of *Working Together*. As part of their monitoring and evaluation function they should then ensure that the LA and Board partners use the procedures effectively, and advise them on ways to improve. LSCBs do not have a role in investigating individual allegations.

3. *Please set out (i) the procedures under which the Independent Safeguarding Authority will review the suitability of school staff to work with children, and (ii) the expected timescale for that process.*

From November 2010, all new workers, seeking to work paid or unpaid with children, must gain ISA registration before starting work. This requirement includes school staff.

From January 2011 we will begin to roll out ISA registration to the existing workforce—those in post when the new requirements came in. We expect full roll out to take around five years as we estimate that, when the scheme is fully rolled out, around 11 million individuals will be engaging in regulated activity, both paid and unpaid, and working both with children and vulnerable adults.

Applications for ISA registration are channelled through the Criminal Records Bureau (CRB). ISA registration is expected to take around seven days.

As part of the process, CRB will gather together the conviction and caution information on the individual, along with any relevant local police information, and pass this to the ISA. The ISA will consider the information and decide whether or not the individual poses a risk of harm and should be barred. They will then invite the individual's representations and consider them before taking a final decision. ISA may also consider an individual for barring as a result of information supplied by referral from an employer, as happens now with referrals to the current barring schemes.

The records of individuals who are registered are kept continuously up to date. So if new relevant local information, or a new conviction, comes to light this information is sent to the ISA for consideration as well.

The law governing ISA's barring decisions is set out in Schedule 3 to the Safeguarding Vulnerable Groups Act and in secondary legislation made under the Act, in particular the Barring Procedure regulations (SI 2008/474) and the Prescribed Criteria and Miscellaneous Provisions Regulations (SI 2009/37). These latter regulations set out the list of offences that lead to automatic barring under the Act. Section 35 of the Act sets out the circumstances in which an employer must make a referral and the Prescribed Information Regulations (SI 2008/3265) set out the information that must be provided.

The ISA have provided some more information on its decision making process. This is available on its website www.isa.gov.org.uk.

4. *Who is responsible for any decision on (i) whether to hold an independent investigation into an allegation and (ii) who should carry out an independent investigation?*

It would normally be the decision of the employer as to whether an independent investigation is done, and if so who should carry that out. Paragraph 5.21 of *Safeguarding Children and Safer Recruitment in Education* says:

“In some such cases⁶ further enquiries will be needed to enable a decision about how to proceed. If so, the local authority designated officer should discuss with the head teacher/principal and chair of governors how and by whom the investigation will be undertaken. In straightforward cases that should normally be undertaken by a senior member of the school or FE college staff. However, in other circumstances, lack of appropriate resource within a school or FE college, or the nature of complexity of the allegation, will require an independent investigator. Many local authorities already provide for an independent investigation of allegations in some way, often as part of the personnel services that schools and FE colleges can buy in from the authority. It is important that local authorities ensure that schools and FE colleges have access to an affordable facility for independent investigation where that is appropriate”.

5. *How can an individual challenge the content of “soft” information disclosed at police officers’ discretion in response to an Enhanced Disclosure CRB check?*

This is a matter for the Criminal Records Bureau to advise the Committee on. However, I have annexed to this letter a copy of the information from the CRB website on “How to raise a dispute”.⁷

June 2009

⁶ Cases where it is clear that an investigation by police and/or enquiries by social care are not necessary, or the strategy discussion or initial evaluation decides that is the case.

⁷ Not printed. See http://www.crb.gov.uk/guidance/applicants_guidance/how_to_raise_a_dispute.aspx