

Managing allegations against staff (including low-level concerns) Policy

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Custodian title	Initial version: Board of Trustees, The Heath Family (NW) MAT Review: Business & Finance Committee, The Heath Family (NW) MAT		

This policy has been adopted at Trust-level, with suitable modification to equally apply at each school within the Trust.

1 DEFINITIONS AND KEY ROLES

- 1.1 The Trust CEO is David Donnelly, ddonnelly@theheathfamily.org.uk
- 1.2 The designated safeguarding lead ('DSL') within the Trust is: Liz Scott, Trust Safeguarding Lead, lscott@theheathfamily.org.uk and is supported by the following deputies:
 - 1.2.1 Sharon Black, Director of Teaching & Learning, sblack@theheathfamily.org.uk
- 1.3 The Trust's registered office is situated in Halton. However, it operates across county borders so we note here the local authority designated officer (**LADO**) for the LA's within which the Trust operates:
 - Halton - duty LADO can be contacted via 0151 511 7925
 - Knowsley - contactable via cpconference@knowsley.gov.uk
 - Sefton - Tracey Holyhead, Tel: 0151 934 3783
- 1.4 The Trust Designated Officer (**TDO**) is: David Donnelly, CEO, ddonnelly@theheathfamily.org.uk
- 1.5 The case manager will be:
 - 1.5.1 the CEO of the Trust or;
 - 1.5.2 the Chair of the Trust in the event the allegation is about the CEO or a close friend or relative of theirs;
 - 1.5.3 the CEO of the Trust in the event the allegation is about the Chair of the Trust Board or a close friend or relative of theirs
 - 1.5.4 the case manager will perform their role in accordance with Part 4 of Keeping Children Safe in Education (as amended) and will liaise with the LADO throughout.

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2 INTRODUCTION: SCOPE AND PURPOSE

2.1 Allegations and/or concerns against any person who works with children must be taken seriously. The purpose of this policy is to provide guidance to follow in the event that an allegation has been made or a concern has been raised against a staff member. This policy aims to follow the guidance contained in the Department for Education's Guidance, *Keeping Children Safe in Education* (2021 and as amended) and HM Government's guidance from *Working Together to Safeguard Children* (July 2018 and as amended).

2.2 This policy should be consulted when considering how to manage both allegations that may indicate that the person subject of the allegations would pose a risk of harm (in line with the harm test outlined on the Disclosure and Barring service website) if they continue to work closely with children, as well as how to act in relation to low-level concerns that do not meet the harm threshold.

2.3 **Allegations that may meet the harm threshold ('Allegation')**

The process, as set out within sections 5 – 14 of this policy should be applied where there is an allegation that a person who works with children has:

- a) behaved in a way that has harmed a child, or may have harmed a child;
- b) possibly committed a criminal offence against or related to a child;
- c) behaved towards a child or children in a way that indicates the individual may pose a risk of harm to children; or
- d) behaved or may have behaved in a way that indicates that they may not be suitable to work with children.

2.3.1 This policy must be read in conjunction with our disciplinary policy and any applicable school child protection/safeguarding policy.

2.4 **Concern that does not meet the harm threshold ('Low-level concern')**

The process, as set out within sections 15 - 25 of this policy should be applied where there is a low level concern that does not meet the 'allegation' harm threshold above.

Keeping Children Safe in Education states that, as part of a Trust-wide approach to safeguarding, a Trust and its schools should ensure that they promote an open and transparent culture in which all concerns about all adults working in or on behalf of the Trust (including supply teachers, volunteers and contractors) are dealt with promptly and appropriately.

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The term 'low-level' concern does not mean that it is insignificant, it means that the adult's behaviour towards a child does not meet the threshold set out above. A low-level concern is any concern – no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' – that an adult working in or on behalf of a school may have acted in a way that:

- a) is inconsistent with an organisation's staff code of conduct, including inappropriate conduct outside of work, and
- b) does not meet the allegation harm threshold above in section 2.3 or is otherwise not serious enough to consider a referral to the LADO – but may merit consulting with and seeking advice from the LADO.

Examples of such behaviour could include, but are not limited to:

- a) being over friendly with children;
- b) having favourites;
- c) taking photographs of children on their mobile phone;
- d) engaging with a child on a one-to-one basis in a secluded area or behind a closed door;
or
- e) using inappropriate sexualised, intimidating or offensive language.

Employees do not need to be able to determine in each case whether their concern is a low-level concern, or if it is not serious enough to consider a referral to the LADO, or whether it meets the threshold of an allegation. Once employees have shared what they believe to be a low-level concern, that determination should be made by the CEO and responded in line with this policy.

- 2.5 Whether dealing with an allegation or low level concern, this policy must be read in conjunction with the Trust Disciplinary policy and more widely with the Trust Child Protection/Safeguarding policy.
- 2.6 In practice, the words 'allegation' and 'concern' can be and are used interchangeably by different people. Sometimes individuals may shy away from the word 'allegation' and express it as a 'concern' instead. The crucial point is that whatever the language used, the behaviour referred to may, on the one hand, be capable of meeting the harm threshold (and hence be included within 2.3), or, on the other, it does not meet the harm threshold (and hence be included instead within 2.4). The focus should not therefore be on the language

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used by the person disclosing it; the focus should, instead, be on the behaviour being described.

3 WHO IS COVERED BY THE POLICY?

- 3.1 Safeguarding and promoting the welfare of children is everybody's responsibility. All staff have a responsibility to provide a safe environment in which children can learn. This policy covers all employees at all levels and grades, including senior managers, officers, employees, trainees, part-time and fixed-term employees (collectively referred to as **employees** in the policy). The policy also applies to supply staff and volunteers.
- 3.2 In the event where an allegation is made against an individual who is not directly employed by the Trust (individuals to whom the disciplinary procedure may not fully apply), for example, supply staff provided by an employment agency, the Trust will still ensure that the allegation is dealt with properly. The Trust will liaise with the LADO to determine a suitable approach and discussions will be had between the Trust and the agency (if applicable) to determine whether it is appropriate to suspend the supply teacher or redeploy them to another part of the school whilst the allegation is properly investigated. The final decision regarding whether an individual can remain in the Trust rests with its Executive leaders.
- 3.3 Allegations made against a teacher who is no longer teaching will be referred to the police, along with historical allegations of abuse.

4 WHO IS RESPONSIBLE FOR THE POLICY?

- 4.1 The Trust Board has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. The Trust Board has delegated day-to-day responsibility for operating the policy and ensuring its maintenance and review to the CEO of the Trust.

ALLEGATIONS THAT MAY MEET THE HARM THRESHOLD

5 THE PROCESS FOR DEALING WITH ALLEGATIONS

- 5.1 The person raising or receiving concern(s) or allegation(s) should do this in line with the Trust's safeguarding procedures. The person raising the concerns must do this without delay. This will involve the person receiving the allegation alerting the case manager of all allegations that come to the Trust's attention and appear to meet the criteria in section 2.3. The case manager will determine the next steps to be taken in response to the allegation(s) made.
- 5.2 The LADO will be contacted to discuss the matter and take advice on what steps are necessary. The LADO may determine that the investigation needs to be undertaken at a multi-agency

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level lead by their office. The Trust will work with the LADO and other third parties until further direction is given.

5.3 Should the LADO determine that the allegations should be investigated at a local level, this policy and the disciplinary policy will be followed (as applicable).

5.4 The Trust has a duty to ensure that any allegation of abuse is dealt with as quickly as possible and this must be done in a fair and consistent way that provides effective protection for the child, whilst at the same time, is supportive of the employee at the subject of the allegation.

6 THE PERSON WHO IS THE SUBJECT OF THE ALLEGATION

6.1 Unless a safeguarding strategy discussion or police involvement is required, the case manager should inform the accused person about the allegation as soon as possible after a discussion with the LADO and provide them with as much information as possible. Where a strategy discussion is needed, or police or children's social care services are required, the case manager should not inform the accused person until the appropriate agencies have been consulted and agreed what information can be disclosed to the accused.

6.2 The Trust will ensure that anybody facing allegation(s) are supported. In the event that an employee is suspended, the Trust will provide them with a contact per section 8.

7 INVESTIGATING ALLEGATIONS

7.1 There are three potential types of investigation:

- a) By the Local Authority and the Police under s.47 of the Children Act 1989;
- b) By the police under criminal law; and
- c) By the Trust in line with this policy and its disciplinary policy and procedures.

7.2 If any further investigation into the allegation(s) is required, the Trust and local authority will decide how the investigation will be undertaken and by who, along with determining how much information will be provided to the employee who is the subject of the allegation. The investigation should be completed as promptly as possible.

7.3 Internal investigations will be undertaken by an investigating officer appointed by the case manager who is a member of the senior leadership team. Under no circumstances will anybody else commence any investigation, or share information relating to the investigation, without express permission of the case manager.

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- 7.4 Where there is a lack of appropriate resource with the Trust or the nature or complexity of the allegation requires it, the allegation may require an independent investigator.
- 7.5 Where an allegation is sufficiently serious to warrant police involvement, the case manager will obtain target dates from the police on which the progress of the investigation will be reviewed by the Crown Prosecution Service and keep the Trust records updated accordingly.
- 7.6 Depending on the circumstances, an employee may be suspended during the course of the investigation in line with the Disciplinary Procedure, further details on suspension are in section 8.
- 7.7 The case manager and LADO will determine how much information will be shared with the alleged victim and their parents/carers and how much information will be provided to other employees in line with the statutory guidance Keeping Children Safe in Education (as amended). The case manager will look at measures to manage speculation and decide what information (if any at all) should be provided to the wider community.
- 7.8 It is important to ensure that parents, guardians or carers who are informed of disclosures or allegations made against a teacher are aware of the criminal offence under section 141F Education Act 2002 for failing to keep allegations confidential during the course of an investigation.
- 7.9 On completion of an investigation, the case manager will agree the next steps with the LADO. Where an allegation leads to disciplinary action being taken, the LADO will be informed of the outcome of the disciplinary hearing and consideration will be given to referring the outcome of the disciplinary hearing to the Disclosure and Barring Service (**DBS**), Teaching Regulation Agency and other regulatory and registration bodies. Such referrals must be made promptly and in line with any guidance issued by the respective bodies. There is a legal requirement for the Trust to make a referral to the DBS where they have reason to believe that an individual has engaged in conduct that has harmed, or is likely to harm, a child or children, or if someone otherwise poses a risk of harm to a child.

8 SUSPENSION

- 8.1 The Trust will consider all options to avoid suspension, such as redeployment. The case manager will consult with human resources or other professional advisers and consider any discussions that have been had with the LADO and/or the police and determine whether the circumstances require the suspension of the employee.
- 8.2 Factors that may be considered when determining if suspension is appropriate include, but are not limited to, whether there is suspicion that a child is at risk of immediate harm, whether the allegation is serious enough to warrant investigation by the police, if the allegation is a

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potential ground for dismissal, or there are other contributing factors meaning that suspension is the only reasonable option.

- 8.3 The case manager should consider if there are any interim measures which could be put in place short of suspension in order to avoid taking this action. The case manager should consider the potential permanent professional reputational damage to employees that can result from suspension when an allegation is later found to be unfounded, unsubstantiated, malicious, or false.
- 8.4 If suspension is required, the employee will be suspended in accordance with the Trust's disciplinary policy and procedures. The employee will receive a named contact. Reasons for the suspension will be provided within one working day, but complete details may be unavailable to disclose due to the involvement of other authorities/agencies. The case manager and employee will agree the support to be in place during the investigation and communicate the expected timescales and likely course of action. If part of a trade union, the employee will be advised to contact them.
- 8.5 If immediate suspension is considered necessary, the case manager should record the rationale and justification for such a course of action. This should include what alternatives to suspension were considered and why they were rejected.
- 8.6 The employee's manager will be informed that they have been suspended whilst an investigation is completed, but no further details will be given.

9 INVESTIGATION TIMESCALES

- 9.1 Cases will be resolved as quickly as possible with a fair and thorough investigation. Allegations will be investigated as a priority and avoid any reasonable delay. The time taken to investigate and resolve individual cases is dependent on the nature, seriousness and complexity of the allegation.
- 9.2 Where it is clear immediately that an allegation is unsubstantiated or malicious, we aim to resolve these cases as soon as possible.
- 9.3 Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the Trust to deal with it, although if there are concerns about child protection, the case manager should discuss them with the DSL. In such cases, if the nature of the allegation does not require formal disciplinary action, the Trust should instigate appropriate action as soon as possible. If a disciplinary hearing is required and can be held without further investigation, the hearing should be held in accordance with the disciplinary policy.

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10 INVESTIGATION OUTCOMES

10.1 When determining the outcome of allegations subject to this policy the following definitions will be used:

- a) **substantiated:** this term will be used when there is sufficient evidence to prove the allegation;
- b) **malicious:** this term will be used when there is sufficient evidence to disprove the allegation and where there has been a deliberate act to deceive or cause harm to the person subject of the allegation
- c) **false:** this term will be used when there is sufficient evidence to disprove the allegation;
- d) **unsubstantiated:** this term will be used when there is insufficient evidence to either prove or disprove the allegation. Therefore, the term does not imply guilt or innocence;
- e) **unfounded:** this term will be used when there is no evidence or proper basis which supports the allegation being made.

10.2 If the allegation is substantiated and after following applicable disciplinary procedures the person is dismissed, or the person resigns or otherwise ceases to provide their services, the DSL and case manager will decide whether to make a referral as set out at 7.9. The case manager will discuss any steps that can be taken to prevent incidents of this nature in the future with the DSL.

10.3 If an allegation is determined to be malicious, the details of the allegation will be removed from the personnel file of the person who is the subject of the allegation.

10.4 If an allegation is determined to be unsubstantiated, unfounded, false or malicious the case Manager and LADO should consider whether the child who has made the allegation is in need of help or at risk of abuse. In such circumstances, they may make a referral to children's social care.

If an allegation is determined to be malicious and it was made by another employee, the person making the allegation may be subject to disciplinary action under the Trust's disciplinary policy.

11 RETURN TO WORK

11.1 If it is decided on the conclusion of a case that a person who has been suspended can return to work, the case manager should consider how best to facilitate that. Guidance can be sought from HR or the LADO as most people will benefit from help and support after a stressful

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experience. The case manager should also consider how the person's contact with the child who made the allegation can be best managed if they are still attending the school or college.

12 RESIGNATION

- 12.1 If an employee hands in their resignation when the allegation is made against them or during an investigation, the investigation and internal process will still continue until an outcome has been reached, with or without the employee's cooperation. However, the individual will be given a full opportunity to make representations in respect of any allegation. Settlement agreements will not be used in situations, which are relevant to these procedures.

13 CONFIDENTIALITY

- 13.1 It is extremely important that, when an allegation is made, the Trust makes every effort to maintain confidentiality and guard against unwanted publicity during the investigation or consideration of the allegation. The Education Act 2002 introduced reporting restrictions preventing any material being published that may lead to the identification of an accused teacher. Breaching confidentiality may amount to a criminal offence under section 141F and is not limited to parents or guardians of a pupil.
- 13.2 The case manager will consult with the LADO and (where appropriate) the DSL, police and children's social care services to determine:
- a) Who needs to know and exactly what information can be shared;
 - b) How to manage speculation, leaks and gossip;
 - c) What, if any, information can reasonably be given to the wider community to reduce speculation; and
 - d) How to manage press interest should it arise.

14 RECORD KEEPING AND REFERENCES

- 14.1 Any details of allegations that are found to have been malicious will be removed from personnel records. For all other outcomes of allegations, a comprehensive summary of the allegation, details of how it was followed up and resolved, and a note of the action taken will be kept on the confidential personnel file of the accused, with a copy provided to the person concerned.
- 14.2 If an allegation is found to be false, unsubstantiated or malicious, it will not be included in employer references.

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- 14.3 For all other allegations the following information will be kept on the file of the person accused;
- 14.3.1 a clear and comprehensive summary of the allegation;
 - 14.3.2 details of how the allegation was followed up and resolved;
 - 14.3.3 a note of any action taken and the decisions reached;
 - 14.3.4 a copy provided to the person concerned where agreed by children's social care or the police; and,
 - 14.3.5 a declaration on whether the information will be referred to in any future reference.
- 14.4 Records must be kept from the point of the allegation being made for either:
- 14.4.1 a period of 10 years
 - 14.4.2 or until the accused reaches normal pension age
- whichever is the longer period of the two.
- 14.5 All allegations of sexual abuse must be preserved throughout the duration of the Independent Inquiry into Child Sexual Abuse.

LOW LEVEL CONCERNS

15 THE RIGHT CULTURE FOR DISCLOSURE

- 15.1 Creating a culture in which all concerns about employees (including allegations that do not meet the harm threshold) are shared responsibly and with the right person, and recorded and dealt with appropriately, is crucial. This encourages an open and transparent culture; enables the Trust and our schools to identify concerning, problematic or inappropriate behaviour early; minimises the risk of abuse; and ensures that adults working in or on behalf of the Trust are clear about professional boundaries and act within them. It also ensures that the Trust's ethos, values and expected behaviour as set out in the Code of Conduct are constantly lived, monitored and reinforced by all staff.
- 15.2 Behaviour which is not consistent with the ethos and values of the Trust, and which does not meet the Trusts expectations as set out within the Trust Code of Conduct, needs to be addressed. Such behaviour can exist on a wide spectrum – from the inadvertent or thoughtless, or behaviour that may look to be inappropriate, but might not be in specific circumstances, through to that which is ultimately intended to enable abuse.

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- 15.3 Where a concern about an individual's behaviour meets the threshold of an allegation, the process outlined in sections 5-14 of this policy must be followed.

16 CREATING THE RIGHT CULTURE

- 16.1 In order to ensure that a culture of openness and trust is fostered within the Trust in which employees can share any concerns about the conduct of colleagues or any adults working in or on behalf of the Trust or school, and be assured that these will be received in a prompt and sensitive manner, the Trust will:

- ensure that employees are clear about what appropriate behaviour is, and are confident in distinguishing expected and appropriate behaviour from concerning, problematic or inappropriate behaviour, in themselves and others;
- empower employees to share any low-level concerns with the CEO/DSL and to help all employees to interpret the sharing of such concerns as a neutral act;
- address unprofessional behaviour and support the individual to correct it at an early stage;
- identify concerning, problematic or inappropriate behaviour – including any patterns – that may need to be consulted upon with, or referred to, the LADO;
- provide for responsive, sensitive and proportionate handling of such concerns when they are raised; and
- help identify any weaknesses in the Trust's safeguarding system.

- 16.2 Within the Trust, there is a commitment from leadership to adhere to, enforce and reinforce the Code of Conduct and its expectations, and to address any attempt to bypass policies or procedures – regardless of the person in question's status. All employees are briefed on the Code of Conduct and this policy so that everyone is familiar with it, and are clear on the standard of behaviour expected of them. All new staff will receive a briefing on low level concerns and a copy of this policy will be provided along with a copy of 'Guidance for Safer Working Practice' (GfSWP).

17 SHARING LOW-LEVEL CONCERNS

- 17.1 It is important that low-level concerns are shared with the CEO/DSL as soon as reasonably possible and, in any event, within 24 hours of becoming aware of it (where the concern relates to a particular incident) - although it should also be emphasised that it is never too late to share a low-level concern and a delay should never been seen as a barrier to sharing.

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- 17.2 If the CEO/DSL are absent for any reason, low-level concerns should be shared with Sharon Black, Director of Teaching & Learning.
- 17.3 It is critical that all low-level concerns above are ultimately received by the CEO. Having one recipient of all such concerns should allow any potential patterns of concerning, problematic or inappropriate behaviour to be identified, and ensure that no information is potentially lost.
- 17.4 If any low-level concern relates to the behaviour of the CEO it should be dealt with in accordance with the principles laid out in Keeping Children Safe in Education and the definitions contained with section 1 of this policy.

18 CONFIDENTIALITY

- 18.1 Similar to the equivalent section 13 of the allegations process covered earlier in this policy, if an employee who raises a low-level concern does not wish to be named, the Trust will respect that person's wishes as far as possible.
- 18.2 However, there may be circumstances where the employee will need to be named (for example, where it is necessary in order to carry out a fair disciplinary process) and, for this reason, anonymity will never be promised to employees who share low-level concerns. Where possible, the Trust will try to encourage employees to consent to be named, as this will help to create a culture of openness and transparency.

19 SELF REFERRAL

- 19.1 Occasionally an employee may find themselves in a situation which could be misinterpreted, or might appear compromising to others. Equally, an employee may, for whatever reason, have behaved in a manner which, on reflection, they consider falls below the standard set out in the Code of Conduct.
- 19.2 Self-reporting in these circumstances can be positive for a number of reasons: it is self-protective, in that it enables a potentially difficult issue to be addressed at the earliest opportunity; it demonstrates awareness of the expected behavioural standards and self-awareness as to the individual's own actions or how they could be perceived; and, crucially, it is an important means of maintaining a culture where everyone aspires to the highest standards of conduct and behaviour.
- 19.3 In line with Keeping Children Safe in Education, the Trust will ensure that there is an environment where employees are encouraged and feel confident to self-refer.

20 SHARING AND RECORDING OF LOW-LEVEL CONCERNS

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- 20.1 Employees will be given the option of sharing their low-level concern verbally with the CEO/DSL in the first instance, or by providing a written account of their concern.
- 20.2 Where the low-level concern is provided verbally, the CEO/DSL will make a written record of the conversation, either contemporaneously or immediately following the discussion. The record will include:
- 20.2.1 the details of the concern;
 - 20.2.2 the context in which the concern arose; and
 - 20.2.3 any action taken.
- 20.3 Sound professional judgement will be exercised by the CEO/DSL in determining what information is necessary to record for safeguarding purposes. The name of the individual sharing the low-level concern and their role should be stated, as should the name of the individual about whom the concern is being raised, and their role within the organisation at the time the concern is raised.
- 20.4 If the employee who the concern relates to has an opposing factual view of the incident, this will be fairly recorded alongside the concern. The record will include brief context in which the low-level concern arose, and concise details (which are chronological and as precise and accurate as possible) of any such concern and relevant incident(s). The record must be signed, timed and dated.

21 RESPONDING TO LOW-LEVEL CONCERNS

- 21.1 Once the CEO/DSL has received the low-level concern, they will (not necessarily in the below order but in an appropriate sequence according to the nature and detail of the particular concern shared with them):
- where the DSL has received the concern, they must liaise with the CEO (as 'ultimate decision maker' within KCSiE) at the earliest opportunity to agree the way forward with progressing the matter
 - conversely, the CEO may wish to consult the DSL and take a more collaborative decision-making approach moving forwards
 - speak to the person who raised the concern (unless it has been raised anonymously), regardless of whether a written summary has been provided;
 - speak to any potential witnesses (unless advised not to do so by the LADO/other relevant external agencies, where they have been contacted);

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- speak to the individual about whom the low-level concern has been raised (unless advised not to do so by the LADO/other relevant external agencies, where they have been contacted);
- review the information and determine whether the behaviour:
 - is entirely consistent with the code of conduct and the law,
 - constitutes a low-level concern,
 - is not serious enough to consider a referral to the LADO – but may merit consulting with and seeking advice from the LADO,
 - when considered with any other low-level concerns that have previously been raised about the same individual, could now meet the threshold of an allegation and should be referred to the LADO;
 - meets the threshold of an allegation and should be referred to the LADO;

Where they are in any doubt whatsoever, the CEO/DSL will always seek advice from the LADO.

- While responding to any incident, the CEO/DSL will make appropriate records of:
 - all internal conversations – including with the person who initially shared the low-level concern (where this has been possible), the adult about whom the concern has been shared (subject to the above), and any relevant witnesses (subject to the above);
 - all external conversations – for example, with the LADO/SCIE Officer (where they have been contacted);
 - their determination;
 - the rationale for their decision; and
 - any action taken

22 POSSIBLE OUTCOMES OF A LOW-LEVEL CONCERN

22.1 If it is determined that an employee's behaviour that is presented as a low-level concern is entirely consistent with the Code of Conduct and the law, the CEO/DSL will:

22.1.1 update the 'employee of concern' and inform them of the action taken as above;

22.1.2 speak to the employee who shared the low-level concern – to provide them with feedback about how and why the behaviour is consistent with the Code of Conduct and the law;

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- 22.1.3 Consider if the situation may indicate that the low-level concerns policy is not clear enough, or if further training is required, especially if similar/repeat concerns are raised
- 22.2 If it is determined that the behaviour constitutes a low-level concern:
 - 22.2.1 It will be responded to in a sensitive and proportionate way – on the one hand maintaining confidence that such concerns when raised will be handled promptly and effectively whilst, on the other hand, protecting employees from any potential false allegations or misunderstandings. Any investigation of low-level concerns will be done discreetly and on a need-to-know basis;
 - 22.2.2 Most low-level concerns by their very nature are likely to be minor. Some will not give rise to any ongoing concern and, accordingly, will not require any further action. Others may be most appropriately dealt with by means of management guidance and/or training;
 - 22.2.3 In many cases, a low-level concern will simply require a conversation with the ‘employee of concern’. It has long been understood that lasting change in behaviour is least likely to be achieved by an approach perceived as critical or threatening.
 - 22.2.4 Any such conversation will include being clear with the employee as to why their behaviour is concerning, problematic or inappropriate, what change is required in their behaviour, enquiring what, if any, support they might need in order to achieve and maintain that, and being clear about the consequences if they fail to reach the required standard or repeat the behaviour in question.
 - 22.2.5 Ongoing and transparent monitoring of the employees behaviour may be appropriate.
 - 22.2.6 Some low-level concerns may also raise issues of misconduct or poor performance. The CEO will also consider whether this is the case – by referring to the Trust Disciplinary policy and/or Capability procedure and taking advice from HR where necessary.
- 22.3 Where a determined low-level concern relates to a person employed by a supply agency or a contractor, that concern will be raised with their employers, so that any potential patterns of inappropriate behaviour can be identified. How an organisation responds to a low-level concern may be different depending on the employment status of the individual who is the subject of the concern - i.e. whether they are an employee, or worker to whom the

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organisation's disciplinary procedure would apply; or a contractor, Governor, Trustee, Director or volunteer who may be subject to alternative procedures.

- 22.4 Some concerns may trigger the Trust's disciplinary, grievance or whistleblowing procedures, which should be followed where appropriate. Where low-level concerns are raised which require other internal processes to be followed, it is sometimes difficult to determine how best to investigate the concern and which procedure to follow. The CEO will exercise their professional judgement and, if in any doubt, they will seek advice from other external agencies including the TDO/LADO;
- 22.5 If the Trust's disciplinary procedure is triggered, the Trust will ensure that the employee has a full opportunity to respond to any factual allegations which form the basis of a disciplinary case against them.
- 22.6 If it is determined that the behaviour, whilst not sufficiently serious to consider a referral to the LADO nonetheless merits consulting with and seeking advice from the LADO, then action (if/as necessary) will be taken in accordance with the LADO's advice.
- 22.7 If, when considered with any other low-level concerns that have previously been shared and determined about the same employee, such concerns could now meet the threshold of an allegation, then it should be referred to the LADO in accordance with Part 4 of Keeping Children Safe in Education, using the allegations section of this policy.

23 STORAGE AND RETENTION OF LOW-LEVEL CONCERN RECORDS

- 23.1 All records of concerns will be kept confidential, held securely and comply with the Data Protection Act 2018 and the UK General Data Protection Regulation.
- 23.2 The Trust will retain all records of low-level concerns (including those which are subsequently deemed by the CEO to relate to behaviour which is entirely consistent with the Code of Conduct) in a central, electronic low-level concerns file.
- 23.3 Where multiple low-level concerns have been shared regarding the same employee these will be kept in chronological order as a running record. These records will be kept confidential and held securely, with access afforded only to a limited number of individuals such as the CEO/DSL.
- 23.4 The rationale for storing such records on a central file, rather than in an employees personnel file, is that:
 - 23.4.1 it makes it easier to review the file and spot any potential patterns of concerning, problematic or inappropriate behaviour;

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- 23.4.2 encourages employees to share low-level concerns; and
- 23.4.3 it keeps low-level concerns separate from an employees record were they do not result in a disciplinary or any other relevant process being followed that would be required to be held on the employees record.
- 23.5 If a referral is made to the LADO where the behaviour in question:
 - 23.5.1 had not originally been considered serious enough to consider a referral to the LADO but merited consulting with and seeking advice from them;
 - 23.5.2 is determined to meet the threshold of an allegation when considered with any other low level concerns that have previously been raised about the same employee; or
 - 23.5.3 in and of itself meets the threshold of an allegationthen records relating to the behaviour should be placed and retained on the employees file, whilst also being retained on the central low level concerns file.
- 23.6 Material on the personnel file will be retained in accordance with Part 4 of Keeping Children Safe in Education – which requires schools and colleges in England to produce a clear and comprehensive summary of all allegations (except those which are found to have been malicious), details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, to be kept on the confidential personnel file of the employee, and a copy provided to them.
- 23.7 Low-level concerns will be retained on the Trusts central low-level concerns file (securely and applying appropriate access restrictions) unless and until further guidance provides otherwise.
- 23.8 When an employee leaves and/or takes up new employment, that creates a natural point at which the content of the file may be reviewed to ensure it still has value (either as a safeguarding measure or because of its possible relevance to future claims), and is therefore necessary to keep. Records will be retained for the entire duration of the individual's employment with the Trust.
- 23.9 Such retention is subject to the rights of individuals to object to or seek to erase or correct records about them under data protection law.

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24 REVIEWING THE LOW-LEVEL CONCERNS FILE

- 24.1 The CEO/DSL will review the central low-level concerns file periodically to ensure that all such concerns are being dealt with promptly and appropriately, and so that any potential patterns of concerning, problematic or inappropriate behaviour are identified. Where a pattern of such behaviour is identified, the Trust will decide on a course of action, either through our disciplinary procedures or where a pattern of behaviour moves from a concern to meeting the harms threshold, in which case it will be referred to the LADO. Consideration will also be given to whether there are wider cultural issues within the Trust and/or school that enabled the behaviour to occur and where appropriate policies could be revised or extra training delivered to minimise the risk of it happening again.

A record of these reviews will be made and stored alongside the file, along with any subsequent actions taken.

- 24.2 Trustees will receive relevant data relating to Low Level Concerns and review anonymised samples of low-level concerns at regular intervals, in order to ensure that these concerns have been responded to promptly and appropriately.

25 LOW-LEVEL CONCERNS AND PROVISION OF REFERENCES

- 25.1 Keeping Children Safe in Education prohibits organisations from referring to unsubstantiated, malicious or false allegations in references. Only safeguarding allegations that have been substantiated should be included in references. Keeping Children Safe in Education states that: “where a low-level concern (or group of concerns) has met the threshold for referral to the LADO and found to be substantiated, it should be referred to in a reference”.
- 25.2 Low level concerns (or a group of concerns) which have not met the threshold for referral to the LADO which relate only to safeguarding should not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance.