CAMPAIGN ON BEHALF OF FALSELY ACCUSED CARERS AND TEACHERS

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Minister Critical of Safeguarding Definitions

The health and social care professional Care Services Minister Paul Burstow has taken a stand against the worrying trend in safeguarding, saying that its definition has been widened to a ridiculous degree.

At a conference held on the 21st February he told delegates that a top-down culture has led to an over-reliance on checklists, process and procedure. People have been abdicating responsibility and covering their own backs instead of taking responsibility and sorting the problem.

Paul Burstow said:

"We need proper systems to report abuse.

"Those systems only work if they are used properly and the people running them do not become bogged down investigating cases that have nothing to do with protecting people from abuse.

"This is about common sense, trusting front line professionals to use their judgement so that the most serious cases of abuse don't get lost amongst cases that should never have been referred in the first place."

He said that procedure is no substitute for professional judgment and that we appear to have lost confidence in the abilities, common sense and skill of our highly trained professionals.

Paul Burstow cited some of the shocking examples he has heard where incidents that should have been dealt with through standard management processes have been escalated to safeguarding alerts:

- A care assistant falling asleep one night, on a single occasion, was reported as a safeguarding issue.
- A torn piece of carpet was reported as a safeguarding issue.

"The Department of Health was told about a service user being given a new care plan to have more variety in their diet, by having several smaller meals each day. It was reported as a safeguarding issue because "not enough main meals" were being provided.

The result of over-reporting such as this leads to paralysis of the local safeguarding system. Countless hours can be spent reporting and investigating things that are clearly far beyond the realm of safeguarding and yet some genuine cases are missed.

Safeguarding Adult Boards are being made mandatory. They already exist in most local authorities, but we are putting them on a legal footing. They will need to make the difference between genuine safeguarding issues and issues of management, staff practice, quality and safety very clear to all."

Falsely Accused Carers and Teachers

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FACTion:
FACTion is produced at quarterly intervals at the national committee's discretion, and is provided free of charge to F.A.C.T. members.

The editorial team welcome articles for publication, of between 150 and 1,500 words, and letters of not more than 200 words. These should be sent, preferably by email to: **faction@factuk.org** or by post to **FACTion, PO Box 15971, Solihull, B93 3GG**

The editorial team reserve the right to edit any article or letter sent for publication.

All submissions must be accompanied by your name and address which, on request, will be withheld from publication.

The views contained in FACTion do not necessarily represent those of F.A.C.T., or its national committee.

Contributors are reminded that FACTion is also published on the internet and therefore is, potentially, available for everyone to read.

Editorial

Christmas and the New Year seem a long way away right now although with our first showing of snow this morning I think winter still has a long way to go. I do hope all of you had an enjoyable Christmas and that 2012 will be a better year for you, and also for F.A.C.T. generally.

There is no doubt that 2012 will be a critical year for F.A.C.T. We urgently need to strengthen numbers on the national committee and to prepare a new generation of people willing to take F.A.C.T. forward. Without this there is a real danger that F.A.C.T. will decline.

Unfortunately we have already had to cancel a meeting of the national committee this year due to members' unavoidable absence which rendered the Committee inquorate.

Hopefully we can use the May Conference to appoint some additional members to the Committee. I do urge anyone who is able to give up just a little time and would like to serve on the Committee to let our secretary know. The Committee meets four times year and whilst there is plenty to do help is always close at hand. Please don't be shy in putting your name forward, because without some extra help the Committee simply will not be able to function.

Talking about the May conference, we are delighted to announce that our keynote speakers will be Nicola Padfield QC and Mark Barlow.

Nicola is an academic lawyer at the University of Cambridge who specialises in criminal law and has carried out research into false allegations. She is also a serving judge.

Mark Barlow is also a barrister and well known to F.A.C.T. and has attended our conferences in previous years. He has considerable experience in defending falsely accused carers and teachers, especially those accused of historical abuse. It will be good to see Mark after a gap of some years. The conference will take place in Birmingham on Saturday 12th May.

Michael

Focus on research: Interim Findings

of research carried out by York Consulting LLP on behalf of DfE.

Survey of allegations against teachers and non teaching staff

Department for Education sponsored research into the scale and nature of allegations made against school and college staff during a 12 month period has concluded that:-

- **Over 12,000 (12086) allegations were referred to Local Authority Designated Officers during a 12 month period. The majority (74%) of investigations were concluded within 3 months.**
- **Almost half (47%) of the allegations made were found to be unsubstantiated, unfounded or malicious (2%)**
- **The majority of allegations made related to alleged physical abuse**
- **18% of teachers were suspended compared with 29% of non teaching staff, and 36% of teachers in further education**
- **12% of allegations in schools were also subject to criminal investigation compared to 31% in colleges of further education.**

Introduction and background

It is essential that any allegation of abuse made against a teacher or other member of staff is dealt with properly and promptly. This means quickly, fairly and consistently, and in a way that provides effective protection for the child whilst protecting the rights and livelihood of the person accused. In *The Coalition: our programme for government*, the government made a commitment to give anonymity to teachers accused by pupils and to take other measures to protect against false allegations. The Education Bill currently before Parliament contains measures to introduce reporting restrictions preventing the publication of a teacher's identity when accused by, or on behalf of, a pupil until the point that they are charged with an offence.

There has been no centralised national data collection on the number and nature of allegations of abuse referred to Local Authority Designated Officers (LADOs) since 2007[1].

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The Department for Education (DfE) commissioned York Consulting LLP to conduct research into the scale and nature of allegations of abuse made against teachers and the processes for handling these at the local authority and school level. This research brief presents the interim findings of the research based on evidence from a census survey of LADOs in 2011. The survey collected data on allegations of abuse made against teachers, non-teaching staff in schools and further education (FE) teachers referred to LADOs in the period 1st April 2009 to 31st March 2010. Questions explored the number and nature of allegations referred, investigative action taken, time taken to conduct investigations and outcomes.

Key findings

• The total number of allegations of abuse referred to LADOs in the 116 LAs responding to the survey in the reporting period was 12,086.

• The number of allegations made against school teachers was 2,827. This constitutes almost a quarter of the total number of allegations referred to LADOs. Whilst the figures are not directly comparable, the proportion of teachers accused of abuse is substantially higher than that reported in the DCSF 2007 survey.

• The number of allegations made against non-teaching school staff was 1,709 constituting 14% of the total number of allegations referred.

• The number of allegations made against FE teachers was 106 constituting 1% of the total number referred.

• The majority of allegations of abuse made against school teachers and non-teaching staff were physical in nature (56%, n=1,584 and 49%, n=842 respectively). Allegations made against FE teachers were most frequently about sexual abuse (49%, n=52) although this figure should be interpreted with caution, given the low base of allegations against FE teachers reported.

- Almost a fifth of school teachers (18%, n=459) were suspended whilst the allegation was being investigated. For non-teaching school staff and FE teachers the figures for suspension were 29% (n=431) and 36% (n=36) respectively.
- Over a tenth of allegations against school teachers (12%, n=336) and 19% (n=323) of allegations against non-teaching school staff were subject to a criminal investigation according to LADOs. For FE teachers, this figure was higher at 31% (n=33) which is likely to be a reflection of the higher number of allegations that were sexual in nature.
- The majority of allegation investigations (74%, n=3,183) were concluded within three months or less.

• Nearly half of the allegations made against school teachers (47%, n=1,234) and two-fifths of allegations against non-teaching school staff (41%, n=639) were found to be unsubstantiated, malicious or unfounded. Nearly a fifth of allegations against teachers (19%, n=497) and 15% of allegations against non-teaching school staff (n=236) were considered to be unfounded and just 2% (n=56) to be malicious. Of the allegations made against FE teachers, 16% (n=16) were found to be unsubstantiated, 7% unfounded (n=7) and none malicious.

Background and research aims

The Department for Education commissioned York Consulting to undertake research which seeks to:

• gather up-to-date evidence on the number and nature of allegations of abuse made against education staff, including school teachers, non-teaching staff in schools and FE teachers;

• examine how allegation processes are handled in local authorities and schools.

The primary focus of the research is allegations against teachers and non-teaching staff **in schools**. Although some information is gathered in relation to FE college teachers and the wider children's workforce, this is not a prime focus. The research focused on the processes for handling abuse undertaken by LADOs and schools. Investigatory processes adopted by the police (e.g. during criminal investigations) and by other bodies were not included within the research remit.

Methodology

The timescale for the research is April 2011 – January 2012. The overall methodology for the research comprises:

• a scoping exercise with 17 schools and union representatives;

• a national survey of all LADOs;

• qualitative interviews with 15-20 LADOs and schools to explore processes in place for dealing with

allegations of abuse;

• a data collection exercise with 15-20 schools.

This research brief presents the findings from the national survey of LADOs. A full report of the overall research findings is due in early 2012.

LADO survey

Following a pilot phase, the survey was sent to 149 local authorities in June 2011. In total, 116 local authorities responded. This constitutes a 78% response rate. The data provided was subjected to validation and quality assurance checks.

Data on allegations of abuse were gathered for the reporting period **1 April 2009 – 31 March 2010**. The design of the survey mirrored, where feasible, the previous 2007 DCSF survey for the purposes of comparison. The survey captured data on school teachers, non-teaching school staff and FE teachers specifically. It collected figures on the number and nature of allegations referred in the reporting period, the investigative action taken, timescales for conclusion and outcomes reached.

LADO survey findings

Number of allegations referred to LADOs April 2009 – March 2010

The total number of allegations referred to LADOs between 1 April 2009 – 31 March 2010 was 12,086 (across 116 LAs). This compares to 4,069 allegations reported for a six month period in the previous DCSF 2007 survey.

The number of allegations of abuse made against school teachers that were referred to LADOs in the reporting period was 2,827. Whilst this represents nearly a quarter (23%) of all allegations referred, it relates to a small proportion of the teaching population as a whole - 0.6% using DfE figures[2].

The number of allegations of abuse made against non-teaching staff in schools was 1,709. This represents 14% of the total number of allegations received by LADOs in the reporting period and 0.4% of the non-teaching staff population[3].

The number of allegations of abuse made against FE college teachers reported to LADOs was 106. This represents less than 1% of the total number of allegations referred to LADOs and 0.08% of the FE college teaching staff population[4]. Half of the LAs surveyed (n=52) reported no allegations against FE college teachers in the period April 2009 to March 2010.

Allegations made against FE teachers referred to LADOs are comparatively much lower than those made against school teachers and non-teaching staff. However, the number of allegations made against FE teachers is similar to that reported for other categories of staff. For example, allegations referred to the LADO in relation to health staff was 3% (n=305) and to staff from voluntary youth organisations was 3% (n=308). These staff spend proportionally less direct contact time with a child than do school teachers, which could account for the smaller number of allegations reported. It could also be that procedures for referring an allegation to the LADO are more embedded for schools.

Nature of allegations made

Over half of the allegations made against school teachers were about abuse that was physical in nature (56%, n=1,584). Nearly a fifth were sexual (19%, n=550), 11% (n=315) related to conduct (i.e. inappropriate language or behaviour used by staff), 8% (n=224) emotional and 2% (n=64) were regarding neglect.

Proportions were similar for non-teaching school staff. Almost half (49%, (n=842) of allegations made were about physical abuse, 25% (n=427) sexual, 12% (n=208) conduct, 4% (n=76) emotional and 5% (n=82) neglect.

Almost half the allegations made against FE teachers were of abuse that was sexual in nature (49%[5], n=52), 27% (n=29) were physical, 9% (n=10) conduct, 5% (n=5) emotional and 3% (n=3) neglect.

Allegations relating to staff carrying out an authorised physical intervention or restraint

Data was sought on the number of allegations of physical abuse that had followed a member of staff carrying out an authorised physical intervention or restraint. The proportion of such allegations was relatively high. The survey found that nearly a fifth (17%) of physical allegations against school teachers (n=224) and non-teaching staff in schools (n=122) related to the use of authorised physical intervention or restraint.

These figures are slightly higher than those reported in the previous DCSF data collection exercise (2007). In the 2007

survey, approximately one eighth (12%) of the total number of allegations of physical abuse followed an authorised restraint. Similar proportions were provided for the sub-category of education sector at 13%.

LADO investigation processes

Use of suspension and resignation during the investigation process

LADOs were asked to report on the number of teachers and non-teaching staff who were suspended or who resigned during the investigation process.

Approximately a fifth of school teachers (18%, n=459) were suspended whilst an investigation was taking place, compared to 29% of non-teaching staff (n=431) and over a third of FE college teachers (36%, n=36). The latter probably reflects the proportion of allegations of sexual abuse made against FE teachers[6].

School staff resignation during the investigation process was uncommon. Just 4% (n=95) of school teachers and 6% (n=85) of non-teaching school staff and over a tenth (11%, n=11) of FE staff resigned.

Investigatory processes

There is no single investigatory process. Different types of allegation are handled by different bodies (police, social services, LA, employer). LADOs were asked to report all types of investigation processes that an allegation had been subject to that they were aware of. The responses show that:

• approximately a third (31%) of allegations made against school teachers (n=865) and non-teaching staff (n=526) resulted in no further action following the initial referral. For FE teachers this figure was 21% (n=22);

• nearly three-tenths of allegations against school teachers (28%, n=803) and 31% of allegations against non-teaching staff (n=527) invoked disciplinary proceedings. For FE teachers, this was 40% (n=42);

• over a tenth of allegations against school teachers (12%, n=336) and 19% against non-teaching school staff (n=323) resulted in a criminal investigation. Although this figure was higher for FE teachers at 31% (n=33), this is likely to be a reflection of the number of allegations of sexual abuse and the low base number of allegations made against FE teachers.

• 3% of concluded allegations against school teachers (n=88) resulted in a criminal caution or conviction, compared to 5% (n=68) of non-teaching staff and 12% (n=12) of FE college teachers. However, it is important to note that this is based on information held by LADOs, rather than figures provided directly from the police. The data provided by LADOs may not be a true indication of the outcomes of allegations that have been subject to criminal investigation.

Time taken to conclude investigations

Survey respondents were asked to provide information on the cases referred during the reporting period that had been concluded to date. The majority of investigations (over 90%, n=4,306) had been concluded. Of those concluded:

• just over half were concluded in three months or less. In the case of school teachers and non- teaching staff in school, most were concluded within a month (54%, n =2,264);

• in the case of FE college teachers, over a quarter of allegations (27%, n=26) took longer than three months to conclude, although only a very small number took longer than 12 months (2%, n=2).

Outcomes of investigations

LADOs were asked to report the outcomes of concluded investigations as being either substantiated, malicious, unfounded and unsubstantiated[7]. Guidance was provided on the definition of these terms.

Nearly half of the allegations made against school teachers (47%, n=1,234) and two-fifths of allegations against non-teaching school staff (41%, n=639) were found to be unsubstantiated, malicious or unfounded. Nearly a fifth of allegations against teachers (19%, n=497) and 15% of allegations against non-teaching school staff (n=236) were considered to be unfounded and just 2% (n=82) of allegations against teachers and non-teaching staff were found to be malicious. Of the allegations made against FE teachers, 16% (n=16) were found to be unsubstantiated, 7% (n=7) unfounded and none malicious.

However, it should be noted that:

• for a substantial proportion (21%, n=899) of concluded cases , LAs were not able to categorise outcomes into one of the four response options provided (44 out of 109 LAs who responded to the question);

• approximately a third of allegations made against school teachers and non-teaching school staff (n=952 and 510 respectively) were subject to no further action after initial consideration. Similarly, 29% (n=28) of allegations made against FE teachers, were subject to no further action after initial consideration.

Further exploration of the outcomes of investigatory processes and the factors underpinning how these are determined and recorded will be an important consideration in the next phase of research.

The next phase of research will also explore the number and nature of allegations made against teachers and

support staff in **schools** and the processes for handling these at the school level. In particular, this will focus on exploring the school and local authority processes in place for making decisions about suspensions; facilitators and challenges in meeting the required timescales for allegation investigations; and the impact and outcome of allegations for teachers. This will be important in contextualising the findings from the LADO survey.

Additional Information

T*his research was carried out by York Consulting LLP on behalf of the Department for Education. This extract represents their interim findings which can also be found at http://www.yorkconsulting.co.uk/uploads/DFE_RB163.pdf*

The full report can be accessed at http://www.education.gov.uk/publications/

The views expressed in this report are the authors' and do not necessarily reflect those of the Department for Education.

Definitions

Substantiated: There is sufficient identifiable evidence to prove or disprove the allegation**.**

Malicious: This means there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false.

Unfounded: This 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. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances.

Unsubstantiated: This is not the same as a false allegation. It simply means that there is insufficient identifiable evidence to prove the allegation. The term, therefore, does not imply guilt or innocence.

Footnotes

[1] Review of Implementation Guidance on Handling Allegations of Abuse Against those who work with children and young people; DCSF 2007. This exercise captured data on all allegations of abuse referred to LADOs over a six month period.

[3]Based on data from the School Workforce in England Statistical Release November 2010 which cites a figure of 448,100 FTE teachers in service.

[3] School Workforce in England Statistical Release November 2010 which cites a figure of 213,900 FTE teaching assistants in service and 188,100 regular support staff.

[4] Further Education College Workforce Data for England report which cites a figures of 122,600 teaching staff in 357 FE colleges.

[5] Caution should be exerted because of the low base of allegations reported against FE teachers.

[6] Caution should be exerted because of the low base of allegations reported against FE teachers.

TRUST TO RECORD ORAL HISTORIES

As many of our readers know F.A.C.T. is associated with an independent trust fund which was set up in 2008 to promote issues relating to contested allegations in historic abuse cases.

The trustees recently met to review the trusts future strategy and decided that because of difficulties in commissioning academic research it would like to promote a publication of representative accounts of individuals (and their families) who have have been affected by the trauma and stigma of false allegations.

What the Trust have in mind is to record and publish, in anonymised form if necessary, the oral histories of approximately 12 people who have been affected by false allegations. It is hoped that the final selection will cover a range of issues which are common to our cause.

Obviously the project can only go ahead if enough people are willing to be interviewed and agree to their stories being published.

The project will be carefully managed in accordance with established principles for taking oral histories and ethical practice. The subjects will at all times have complete control over what is published and full control over any recorded interviews.

This project provides a unique opportunity for falsely accused people to have a voice and for their histories to be acknowledged and validated. If you would like to be involved in this project as either a subject or an information gatherer, or know someone who might be interested, please let the Chairman know as soon as possible. The project is expected to last about 18 months.

The Trust has also given notice that it would like to appoint two trustees to oversee this project. The Trust meets about twice a year and would particularly welcome interest from people who are concerned about injustice issues, or in documenting personal histories. If you would like to be considered please let the national Secretary or the Editor of FACTion know as soon as possible.

Disciplinary Procedures Explained

When a person is suspended we are often asked "what happens next?" Whilst each case is different and turns on its own merits the overall procedure is much the same particularly for those staff employed by local authorities and government bodies, including health trusts. Always keep in mind that in order to accrue employment protection, currently one years continuous employment is required to qualify for the statutory right not to be unfairly dismissed (but not in the case of alleged discrimination where there is no qualifying period). The Government has however indicated that the qualifying period may be extended in the future.

All private employers will have their own procedures. Typically they operate within shorter time scales and are much less generous than is the case with public sector employers.

If an allegation has been made against you, and you have been suspended, or are likely to be, you should always ask to see your employers disciplinary procedures. These procedures, which may sometimes be incorporated into staff handbooks, not only describe the investigative process but also the rules of engagement. Study it carefully and note any deviations the employer might make from what is described.

Generally speaking the disciplinary procedures are divided into four stages

- Receipt of the complaint
- Investigative stage
- Full hearing
- Appeal stage

Receipt of the complaint

Whenever a complaint or serious concern has been made about an employee the employer has to decide what to do about it. If they decide that the information received requires further investigation and that, if true, it would amount to misconduct or gross misconduct they will normally inform the employee of the complaint made or concerns expressed and of their decision to make further inquiries into the allegations made. Depending on the seriousness of the allegations the employer may decide to suspend the worker whilst an investigation is carried out. Suspension should however only be used as a last resort or where there is a real potential that the accused could undermine the investigation.

Normally suspension is on 'full pay' but private employers will sometimes limit this to a defined period of time. When a person is suspended the employer has to give its reasons for doing so. Usually they simply inform the employee in general terms what the complaint is. Rarely, at this stage, will they indicate who, or in what context the complaint was made. Sometimes the employer will attach conditions to the suspension. Typically they will instruct the worker that whilst suspended they may not visit the work place or have any contact with work colleague at work. The phrasing of these instructions will vary. The employer is perfectly entitled to prohibit a suspended member of staff from visiting the work place - unless of course it has a dual function and, for example, functions as a community resource, polling station etc.).

Generally speaking the employer is not entitled to prevent social (as opposed to professional) contact with work colleagues in their own time and away from the work place. This is particularly true if the employer is bound by the Human Rights Convention (not all employers are) which provides a right to association and family life. The Human Rights Convention also provides an accused person with the right to defend themselves against an allegation. If you think your employer has acted unreasonably in preventing you from having social contact with colleagues (or ex colleagues), or from contacting someone who has

information relevant to your defence you should seek immediate legal advice.

Investigative stage. Key principles:

1. You should be called to an investigative meeting (with due notice).
2. The investigating officer will normally be a senior manager who has had no prior involvement with the complaint. Their task is to examine the facts which support the complaint made or concern expressed AND to examine the facts which point to innocence, and then to decide whether there is a case to answer. It is not the job of the investigating officer to determine guilt.
3. Prior to the meeting taking place you should be told of your right to be accompanied by your trade union representative, or work colleague.
4. Although the meeting will be formal (i.e. official) it should be relaxed and conducted in a non adversarial way.
5. The investigating officer will normally be accompanied by a human resources advisor.
6. The investigating officer has a responsibility to give you full details of the allegation, who made it, and the context in which it was made. Good practice suggests that this should be done at the outset. However it is not uncommon for the facts to be revealed incrementally.
7. The investigating officer should ensure that notes are taken of the questions asked and answers given. A copy of any notes taken by the employer should be given to you within a reasonable time limit (2 weeks) for you to *agree* the contents and point out any errors of fact, emphasis or omission.
8. The meeting is a two way process. It is an opportunity for you to find out what the allegations are and an opportunity for the employer to hear from you what your response is.
9. Investigative meetings are not trials - they are simply a mechanism for exploring the facts.
10. You should however consider carefully the extent to which you wish to establish your innocence. Sometimes, for strategic reasons, it is better just to rebut the allegations rather than divulge your defence ahead of any possible disciplinary hearing.
11. Sometimes it may be helpful to provide a written account of any precipitating incident, or to provide timelines or diagrams such as a map or building plan. If you do, make sure you have retained a copy.
12. Do not be tempted to 'best guess' any answers if you are unsure of the facts. It is much better to simply say you don't know the answer if that is the case.
13. You have the right to request that the investigating officer interviews people who may have information helpful to your defence, or to request that they examine particular documents or records.
14. After the INVESTIGATING stage is over the investigating officer will normally write a report for the employer setting out the facts and giving an opinion as to whether or not there is a case to answer. If the matter progresses to a full disciplinary hearing this report should be made available to you.

The Disciplinary Hearing

15. If you are called to a disciplinary **hearing** you must be given reasonable notice so that you can take advice and/or prepare a written defence. Most employers allow 2 weeks but in complex cases, particularly when the employer has taken months to prepare their case, you should ask for more time to seek advice and prepare your defence.
16. You must also be told if you are vulnerable to being dismissed.
17. Having decided to have a full hearing your employer will normally send you a bundle of evidence on which they rely. This will usually contain:-
    - the original letter of complaint (if there was one)
    - details of the alleged disciplinary offence(s)
    - a copy of the investigating officer's report
    - a copy of all the statements made by anyone interviewed as part of the investigation
    - copies of any relevant information on which the employer relies in order to prove their case e.g. school policies, staff handbooks etc.
    - a copy of the relevant disciplinary procedures.
18. The hearing must take place in a confidential setting and take into account any disability needs you may have.
19. On receipt of the bundle you are advised to consult with your trade union representative and discuss with them the need for any immediate legal advice
20. Once you have read the bundle you should start preparing your own statement of case as part of your defence - see below
21. You will also need to:-
    - consider whether the employer has withheld any information which might assist your defence and if so whether you need to take formal action under

the Data Protection Act or the Freedom of Information Act

- identify any specialists whose knowledge and expertise would assist the disciplinary panel in coming to a judgement
- identify people who might assist your defence and would be willing to provide a witness statement, including character witnesses

22. We strongly advise accused staff to make out their own written bundle of evidence in support of their defence. This could include a line by line examination of the investigating officers report, drawings, maps, timelines, photographs, good practice guidelines, testimonials and character references etc.

The Hearing

23. The hearing itself will normally be heard by either a single person or a panel of three chosen for their independence - that is people chosen because they have not been **part of the investigation.** Usually the panel will be supported by either a human resources person or a legal person whose job it is to provide advice.
24. The procedure to be followed at the hearing will be set out in the employer's disciplinary procedures.
25. Usually the investigating officer will outline the original complaint, and then set out his/her investigative findings. Some employers however arrange for someone other that the investigating officer to present the case and effectively act as the prosecuting officer. If this model is preferred the investigating officer will be called upon to explain how they went about the investigation, who they interviewed and what their findings were. If necessary they may bring forward any persons who have provided witness statements which the employer relies on as part of their case.
26. You are entitled to ask the investigating officer any question you wish about the process they adopted and their findings.
27. You are also entitled to question any (or all) of the witnesses called to give evidence.
28. *Before* the hearing commences you might find it useful to prepare a list of questions for each witness, allowing space for any supplementary questions that might arise from their verbal evidence. Preparing such a list will not only help you absorb the facts but will also make your questions more structured and relevant, and will help prevent you from forgetting key issues on the day.
29. The hearing itself usually lasts for a full day but can be much longer in complex cases.
30. You should always be given the last say. Particularly during the summing up phase.
31. When the parties have made their case they are usually invited to summarise their arguments. It is a good idea to prepare your main arguments (in writing) beforehand and then to fill in any gaps that arise during the day.
32. Some panels give their decision on the day, others don't. If you are found guilty you should be invited to give any evidence you may have in mitigation.
33. The eventual sanction imposed by the employer **must** follow the guidelines set out in the employer's disciplinary procedures. These may range from a warning to dismissal. If the panel consider you have been guilty of gross misconduct you are likely to be immediately dismissed. If you are just found guilty of misconduct this cannot happen, but some sanction will apply, usually a written warning.

The Appeal Stage

34. Your employer's disciplinary procedures will set out your right to appeal. You will need to read the procedures carefully as they can differ widely. The things to look out for are:-

- **Timescales:** These are often of short duration, typically two weeks (10 working days). If you need more time, ask for it. We suggest you send a letter to your employer confirming your intention to appeal and setting the reason why you need more time to prepare your case.
- **Scope:** You need to establish what scope you have for appeal. Check whether you can appeal the whole case or just elements of it, and/or if you can appeal the sanction imposed.
- Depending on the above you will also need to find out if the appeal with be a rehearing of the complete case, or just a specific evidential matter, or a process issue.

Note: *If you think it might be necessary to take your case to an employment tribunal you must do so within 3 months of your dismissal* ***and not within 3 months of your appeal.***

If necessary make an immediate application to an employment tribunal as soon as your dismissal is confirmed, indicating that you will provide further evidence once your appeal has been heard. Employment Tribunals are very strict about maintaining statutory time limits and rarely exercise any discretion.

Spotlight on the statutory reasons for dismissal

The legislation lists five specific types of reason which can justify dismissal. They are as follows:

1 Conduct

This is by far the most common reason for dismissal and the one which leads to the largest number of complaints of unfair dismissal. For this reason this guide is chiefly concerned with dismissal for disciplinary reasons. On the specific question of criminal offences see the paragraph on Dismissal in Connection with Criminal Offences.

2 Capability

The employee is unable satisfactorily to do their job, or does not have the necessary qualifications. The question of the employee who becomes unable to do his or her job because of illness can also lead to dismissal on grounds of capability.

3 Redundancy

In general, an employee can have no grounds for claiming unfair dismissal if the dismissal was because of redundancy, that is because the employer had no work or insufficient work for the employee to do. There are, however, some circumstances in which it is unfair to make an employee redundant.

4 A Statutory Requirement

This may prevent the employment continuing, for example where a chauffeur has lost his driving licence and there is no other suitable job available.

5 Some other Substantial Reason

Situations may arise, however, where an employer has a good reason for dismissing an employee which is not one of those listed above. An example would be the dismissal of an employee who breached their contract of employment.

Test of Reasonableness

An employer must act reasonably in all the circumstances in treating the reason for dismissing the employee as a sufficient reason for the dismissal. Not only must the employer have a valid reason for the dismissal, but he or she must have acted reasonably in all the circumstances in dismissing the employee for that particular reason.

The question of whether the employer has acted reasonably not only involves consideration of the way in which the dismissal was carried out, but also whether he or she acted reasonably in relation to the situation leading up to the decision to dismiss the employee.

For example, if the employee was dismissed for misconduct or lack of capability, it is necessary to consider whether he or she was warned and given a chance to improve.

In deciding whether the employer acted reasonably in dismissing the employee an employment tribunal will also take account of whether the employers disciplinary procedures were followed correctly.

Written Statement of Reasons for Dismissal

Employees who have been dismissed have a statutory right to request a written statement of the reasons for their dismissal, which their employer must provide within 14 days. Employees who are dissatisfied because they have not received a statement or believe the statement to be inaccurate may refer the matter to an employment tribunal.

All employees with one year's continuous service with their employer qualify for this right.

Well Done Mark

F.A.C.T. member Mark Merrett has been praised for his charity efforts. As an extract from an article in the *Penarth Times* shows.

A PENARTH man has entered into the festive spirit by raising more than £200 for Bobath Children's Therapy Centre Wales.

Mark Merrett, of Victoria Road, raised the money through a Christmas raffle, which was drawn last week with prizes including a television and a camcorder.

Mark is a regular fundraiser for the charity, and as reported in the Penarth Times earlier this year, was presented with a certificate after donating more than £2,000 over the last ten years.

"I feel proud that I can give to children who are disadvantaged in society," he said. "These children really need and deserve this kind of help."

Mark, 41, raised the £202 by selling raffle tickets at Cottrell Park Golf Club."

Apart from his charity work Mark has tirelessly campaigned on behalf of falsely accused carers and teachers and regularly holds Government Ministers and politicians to account through his letters to them. Well done Mark.

Tribunal rules police right not to release anonymised sex offender statistics on teachers

Police did not have to disclose anonymised data about the number of teachers investigated and charged for sexual offences as the information could have been used to identify individuals, a Information Rights Tribunal has ruled (26 Sep 2011).

The Tribunal, formerly the Information Tribunal, said that the information being sought under freedom of information (FOI) laws amounted to sensitive personal data and should not be disclosed. It rejected the claim that the information should still have been disclosed through special provisions in UK data protection laws.

Colleen Smith had requested that Devon and Cornwall Constabulary release information about the number of "teaching staff" in schools and colleges in Torbay, Teignbridge and South Hams who had been investigated, cautioned and charged under Section 16 of the Sexual Offences Act (SOA).

Under Section 16 of the Act a person aged 18 or over commits an offence if they abuse a position of trust by intentionally and sexually touching a child.

Devon and Cornwall Constabulary refused to disclose the information claiming that the information was exempt under FOI laws. Smith complained to the Information Commissioner's Office, which is responsible for ensuring compliance with FOI and data protection laws.

The ICO ruled that the police should give out the data for Teignbridge and South Hams. No personal data was contained in that information as there were no instances where police had investigated, cautioned or charged teachers under Section 16 of the SOA, the ICO had said. However, information relating to Torbay did contain personal data and should not be disclosed, the ICO said.

The Freedom of Information Act (FOIA) and the Freedom of Information (Scotland) Act came into full force on 1 January 2005, giving individuals the right for the first time to see information held by Government departments and public bodies.

An exemption in FOI laws allows public authorities to refuse to disclose information they hold when the information amounts to personal data.

Smith argued that the information she had asked for consisted of anonymised statistics that were not personal data, but Devon and Cornwall Constabulary and the ICO disagreed, arguing that the information could be used alongside existing reports in the public domain to identify individuals.

The Tribunal ruled that the anonymised sexual offences data, allied to information already available to the public, amounted to personal data that is exempt from disclosure under FOI and data protection laws.

"Section 16 of the Sexual Offences Act 2003, abuse of a position of trust, is an offence for which there are relatively rare convictions," the Tribunal said in its ruling. "As such, it is a matter of common knowledge that the disputed information will contain low figures."

"The Tribunal has considered both the disputed information and the 'other information' and is satisfied

that a living individual can thereby be identified and that therefore the disputed information is 'personal data' to which the Data Protection Act applies," the ruling said.

"The Tribunal took into account that the Torbay schools area covered 42 local authority schools and a number of private institutions but considered that, given the low number of section 16 convictions, this should be viewed as a relatively small geographic area," the ruling said. "The Tribunal was satisfied that information existed in the public domain which made identification possible. The Tribunal was further satisfied that the disputed information was sensitive personal data ... being clearly information as to a data subject's sexual life (this being a matter relating to sexual offences) and the commission of offences."

Smith had argued that even if the ICO had been right to find the information she was seeking was sensitive personal data the watchdog had still been wrong to rule that it was "unfair" or in breach of a principle of UK data protection laws to do so.

Under the Data Protection Act organisations must process personal data fairly and lawfully. Sensitive personal data, including information about someone's sexual life or "the commission or alleged commission by him of any offence", should not be processed unless under strict conditions. However, a Data Protection (Processing of Sensitive Personal Data) Order does specify conditions in which organisations can legally disclose sensitive personal data.

Under the Order sensitive personal data can be disclosed if it is in the "substantial public interest" to do so, and as long as the information "is in connection with the commission by any person of any unlawful act (whether alleged or established)", or connected to a number of other acts. The information must also be for a "special purpose", which includes for journalistic, artistic or literary purposes. Finally, the organisation must also consider that the data may be published so should "reasonably believe" that publication would be in the public interest.

The Tribunal said that, whilst there was "public interest in disclosure" of the data on sexual offences, there was not the "substantial public interest" required for the information to be disclosed.

"The evidence falling within the relevant period, did not substantiate a widespread concern as to the subject matters of the letter of request, a prevalence of sex offender activity in the schools in the Torbay area or of police incompetence or neglect in following this up," the Tribunal ruling said.

"It was not enough, in the Tribunal's view, that sexual offences by teachers or others in positions of trust was a matter of keen interest to the public. This, on its own, did not make disclosure 'in the substantial public interest'," it said.

The Tribunal said it had weighted the "wholly understandable concerns" of the public around child sex offences against "the detrimental effects that disclosure could have," citing the chances of "vigilantism" occurring which may cause individuals to "disappear". The Tribunal also said that the public's "need for reassurance was not as necessary or compelling" as Smith had argued because the information she wanted to be released was already contained as part of other sex offender statistics that had already been published.

"The Tribunal felt overall, although it did consider this to be a finely balanced judgement, that the outstanding answers to the letter of request would be more a matter 'of interest' to the public than disclosure 'in the substantial public interest'," the ruling said.

Ruling: http://www.bailii.org/uk/cases/UKFTT/GRC/2011/2011_0006.html

Spring Conference

Our Spring Conference

will take place in

Birmingham

on

Saturday 12 May 2012

commencing 11:30am

The main speakers will be

Nicola Padfield QC

and

Mark Barlow

Nicola is an academic lawyer at the University of Cambridge who specialises in criminal justice and has carried out research into false allegations. She is also a serving judge.

Mark Barlow is also a barrister and is well known to F.A.C.T and has attended our conferences in previous years. He has considerable experience in defending falsely accused carers and teachers especially those accused of historical abuse. It will be good to see Mark after a gap of some years.

We also plan to make room for a discussion on FACT's future. Please make every effort to attend.

If you need further information please contact

The secretary

PO Box 15971,

Solihull, B93 3GG

Email: sec@factuk.org **Phone: 01564 742 002**

Solicitors Regulation Authority urge Solicitors to be more transparent over fees

The Chief Executive of the Solicitors Regulation Authority, Anthony Townsend, recently said (November 2011) that customers who go to law firms are too often left in ignorance about progress in their case then burdened with a large bill at the end of proceedings.

Launching a new system of regulation for the expanding profession, Anthony Townsend said there were instances of gross overcharging and consumers needed to be given more information about costs.

"The key concerns that came up from consumers [in our research] were to do with information," he explained. "The biggest worries were lack of clear expectations and a lack of clarity about charging. Clients feel they don't know what's going on, there are delays that are unexplained and they are handed a huge bill at the end."

There are more than 156,000 solicitors in England and Wales, a figure that continues to rise. Not all of them are practicing - last year 79 were struck off for various aspects of professional misconduct.

Among the most exclusive City firms and divorce experts, fees of up to £700 an hour are not uncommon. The SRA does not impose a cap on fees but believes its duty is to ensure that there is greater transparency.

"There are some cases of gross overcharging and we do take action," Townsend said. "But we are not a price regulator. Where someone has been grossly exploited we will take action.

"Our concern is mainly where it has not been made clear what the charges are likely to be." For a client to wait two years and then suddenly be presented with a bill for £20,000 when they expected far lower charges was not acceptable, he said.

The SRA's priority is not securing refunds for large financial firms who have in-house lawyers to pursue such claims, Townsend said. "An immigrant facing an asylum appeal is much more vulnerable and the risk there is something with which we should be concerned."

The SRA is funded by the Law Society, the body which represents solicitors, and operates in accordance with the statutory requirements of the Legal Services Act. It describes its regulation as independent and is in the process of altering the composition of its board so that the majority is no longer formed by solicitors but by lay members.

Its new code of conduct has been revised to reflect changes in the legal profession brought into effect by what are known as alternative business structures (ABS).

The government-backed ABS reforms are intended make legal services more accessible to the public by allowing lawyers to work in partnerships with other professionals.

The justice minister, Jonathan Djanogly, has said the reforms will enable people to obtain legal help more easily in places like supermarkets and online. Opponents of the reform fear it will sound the death knell for the traditional high street solicitor's firm.

The SRA's expanded role will bring all these new firms under its oversight. "This [new code] is about a relentless focus on the interest of consumers and the public interest," Townsend said. "We hope it makes it easier for consumers to know what a regulated law firm should do for them."

The authority will, in future, have to police the ban on referral fees which the government has promised to enforce, and is about to launch a consultation on whether, in an era of globalisation, its role should extend to regulating the proliferating overseas offices of UK law firms.

FACT consulted over CRB changes

As many members will know F.A.C.T. is standing member of the Home Office Criminal Records Bureau Statutory Guidance Working Group. The group was established following Sunita Mason's report on the need for a balanced approach to safeguarding issues following widespread concern that both the ISA and CRB schemes needed to be clawed back to common sense levels. The group have met on three occasions and a further meeting is planned in March. The F.A.C.T. chairman says the meetings have proved to be very useful and all stakeholders have been encouraged to review critically proposals for change. As a result a number of suggestions for change have been made to the draft guidance. Once the consultation period has been completed the Home Office hopes the new procedures and guidance will come into force before the end of the year.

Police admitted malicious prosecution of a serving police officer

A former Cleveland Police officer who was wrongfully sent to prison has been awarded almost £400,000 after an 18-year legal fight.

Former traffic officer Sultan Alam, 48, was jailed for 18 months in 1996 for conspiracy to steal car parts, but was cleared by the Court of Appeal in 2007.

Cleveland Police had admitted the malicious prosecution of Mr Alam, at Leeds County Court.

Judge Andrew Keyser QC said the force had tried to "destroy" his reputation.

Cleveland Police said it was "pleased" with the outcome.

As well as damages, Mr Alam will also receive compensation for loss of earnings which has yet to be calculated.

After being wrongfully jailed, Mr Alam was reinstated to Cleveland Police, but retired in 2009 on health grounds.

The court heard how the officer, who served half of his prison sentence, was "stitched up" by fellow officers as a result of industrial tribunal proceedings he launched in 1993, complaining of racial discrimination.

In 2003, four fellow officers involved in Mr Alam's original prosecution were charged with conspiracy to pervert the course of justice and other offences, but were acquitted.

In his judgement published on Wednesday, Judge Keyser said: "The claimant knew that he was not the unfortunate victim of an accidental miscarriage of justice but that he was the deliberate target of a conspiracy to pervert the course of justice, the aim of which was to destroy his reputation and his career.

"That is not an incidental feature of this case but is at the heart of the harm suffered by the claimant.

"The award of aggravated damages reflects the fact that downfall was deliberately brought about by the concerted action of police officers."

A Cleveland Police spokesperson said: "The events under investigation occurred many years ago and their impropriety was recognised by current senior management by the early admission of liability made on behalf of the present chief constable at the outset of this case.

"The award of compensation to Mr Alam now draws a line under this unfortunate matter. We wish Mr Alam well for the future."

Earlier this month after hearing he would receive damages, Mr Alam said: "I'm relieved it's over."
Source: BBC

Taxi drivers will require enhanced CRBs

In what many will see as a U turn the Government have announced that taxi drivers will require enhanced CRBs as part of their licensing conditions. Under the current regime, only drivers who pick up children or vulnerable adults are automatically eligible for enhanced checks, although some firms do choose to get these extra checks for drivers as a matter of course.
A Government spokesman said " The government has received representations from a number of organisations concerning the appropriate level of criminal records checks for licensed taxi and public hire vehicle drivers. At present the legal entitlement for many drivers is for a standard level criminal records check, although the practice has grown up of applying for enhanced level checks across the sector. These checks include any relevant local police information, in addition to a record of previous criminal convictions, cautions and warnings.

"Having carefully considered these representations, and consulted representatives of the sector, we have decided that:

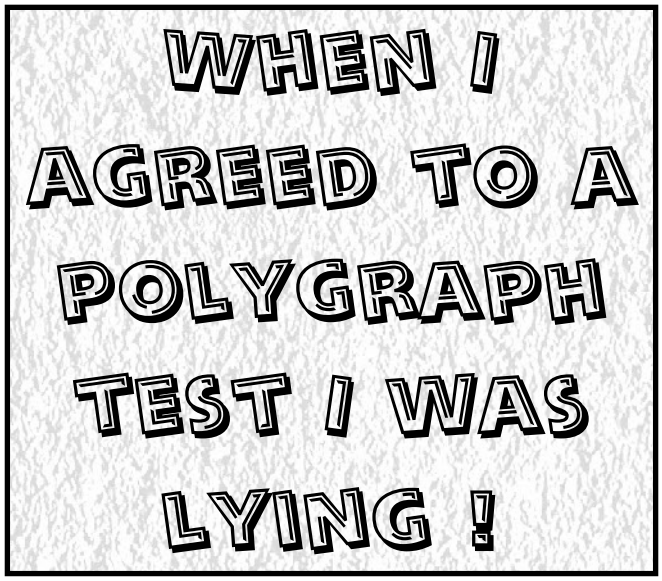
- all taxi and private hire drivers should be entitled to an enhanced criminal records checks
- licensing authorities will additionally be entitled to check whether any applicant is barred from work with children or vulnerable adults under the Safeguarding Vulnerable Groups Act 2006

Taking account of the fact that many drivers are self-employed, criminal records applications may be made through the appropriate licensing authority. The decision on whether to grant a licence will remain a matter for the licensing authority".
A Government spokesman said, "These proposals standardise the practice and simplify the system, giving additional reassurance to customers using taxi services and will ensure that licensing authorities have all the information they need to make informed decisions before granting licences to drivers".

and finally... It seems to me

New Year's Eve brought the news that police have begun using lie detector tests on suspected sex offenders in a trial which could be widened.

According to the BBC news channel "Hertfordshire Police said it had been using polygraphs, which monitor heart rate, brain activity, sweating and blood pressure, during questioning. The trial involved tests on 25 'low-level' suspects ahead of any charges being brought."



It is claimed that the polygraph test (to give it is correct name) had been used to speed up the risk assessment process.

A spokesperson for the constabulary goes on to state that "The testing is undertaken ahead of any charges being brought and involves specialist officers from the constabulary's paedophile unit working with an expert who conducts the test on first-time suspected offenders who have volunteered to co-operate with police," but goes on to state that "Evidence elicited during the examinations is not admissible at court."

Detective Chief Inspector Glen Channer, head of the force's child protection unit, added: "The polygraph testing provides us with an additional tool and has cut down investigative time significantly, leading to a more efficient process, often helping to identify additional offences."

The Association of Chief Police Officers (ACPO) said the tests were not a "single solution to solving crimes". ACPO, which represents chief police officers in England, Wales and Northern Ireland, said its Homicide Working Group advised police on the use of polygraph techniques. "Polygraph techniques are complex and are by no means a single solution to solving crimes, potentially offering in certain circumstances an additional tool to structured interrogation. "

Bruce Burgess, formerly Chairman of the British Polygraph Association, said "If they polygraph six people and they get five truthful results and one deceptive, they can home in on that person. These initial trials are in their very early stages and we will follow their progress, working with Chief Officers across the country to provide further guidance if necessary. Whether these techniques are adopted elsewhere in the country is a matter for individual chief constables."

Mr Burgess said lie detectors were considered to be a useful "investigative tool" in the United States, even though they produced evidence that was "very difficult to get into court" and were unlikely ever to be used as "a guilty or innocent tool". He said offering polygraph tests to a number of suspects could provide a degree of insight if, for example, somebody refused to take the test.

Mr Burgess, interviewed on the BBC news channel, admitted that the tests were not reliable, but claimed that he could tell from the results who was and who was not actually guilty. Intuition and insight is a wonderful gift!

Although the Hertfordshire pilot looked at the use of lie detectors to aid decisions over whether or not to charge suspects, a three-year pilot study in the East and West Midlands could lead to the compulsory testing of convicted sex offenders.

The Ministry of Justice has been overseeing the project, aimed at testing sex offenders as part of their probation conditions when they are freed from prison. However, the results of lie detector tests are considered too unreliable for use in criminal trials.

Should the justice system dabble in a methodology which is unreliable? If it is not necessarily reliable will they allow trials and appeals to be done on the test only? Of course they will not, so why bother? If tests are unreliable why use them at all?

Will they give polygraph tests to those who make (false) accusations against F.A.C.T.'s members – carers and teachers?

Perhaps the use of such tests on accusers might be used to prevent false cases ever coming to court!

If the accuser will not take a test, why should the accused?

What do you think?

S.E.Ems