

Submission

RE: DfES proposals for dealing with allegations made against teachers and others in schools

Earlier this year (2005) the Department for Education and Skills (in England) consulted on proposals for dealing with allegations made against teachers and other staff. After consulting with its members F.A.C.T. submitted its response based on the specific questions posed by the Government. In effect respondents were asked to agree or disagree with proposals made in the consultation document.

THE PROPOSALS SHOULD BE ADAPTED FOR USE IN A) IN OTHER SETTINGS, AND B) VOLUNTEERS IN SCHOOLS.

1. F.A.C.T. welcomes the Government's decision to re-examine arrangements for dealing with allegations against teachers and other staff. We recognise that **all** allegations made against staff of whatever position or rank should be fully investigated. We believe that the **process** of investigation should be uniformly applied to all settings but recognise that different 'contractual' situations may require different arrangements.
2. Everyone has the right to defend themselves against any allegations that have been made against them, and the right to a fair and impartial hearing. Not everyone's situation will necessarily follow the same route, or will lead to the same outcome. For example, complaints about school governors, head teachers may need to be treated differently simply to ensure public confidence in the investigation. Similarly, complaints which fall short of alleged abuse, or which do not warrant police involvement or raise child protection concerns, may need to be treated differently to others.
3. The important thing is to have an agreed procedure and a system of investigation which both parties - those making the complaints and those being accused - have confidence in. At the present time this does not happen.

DO YOU AGREE THAT THE GOVERNMENT SHOULD TAKE STEPS TO RESOLVE CASES QUICKLY AND SO REDUCE THE OPPORTUNITY FOR UNWARRANTED PUBLICITY.

1. There has rightly been criticism of LEA's (and other's) failure to resolve cases involving allegations made against teachers quickly enough - especially in child abuse cases. (We know of one case that took almost 7 years to resolve where the staff member received pay throughout). F.A.C.T. supports the view that the process of inquiry and subsequent decision making process is often soul destroying, damaging to one's health (often with career threatening consequences), and even life threatening as it may lead to suicidal behaviour.
 2. Whilst we support the need for speedier outcomes the important issue is not one of time but of justice. Above all else, those accused want their cases to be fully and competently investigated. There is considerable evidence that this does not
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happen. Indeed F.A.C.T. has identified a worrying trend in that many of those LEA's/LA's who have adopted a speedier response have done so at the expense of the quality of their investigation. This serves no one's interests.

3. The issue of publicity is a separate issue. F.A.C.T. recognises the need for anonymity in cases of alleged abuse by carers and teachers - and indeed all other persons. With some notable exceptions most LEA's recognise the need for anonymity. The problem of publicity we believe has more to do with the actions of employers and the police than the Press. (F.A.C.T. has very little evidence that recent guidelines issued by [Association of Chief Police Officers](#) [ACPO] regarding the need for the Press to respect anonymity have made any real difference.)
4. F.A.C.T. is aware, for example, of cases where people who have been the subject of police inquiry but have never been arrested – let alone charged – who have been subjected to Press publicity as a direct result of decisions directly taken by L.A's and by Police Forces issuing press statements revealing their names.
5. In our view the Government's proposals do not go far enough. We believe anonymity should be guaranteed up to the point of **conviction**, and should apply to all cases of alleged abuse and not just sexual abuse. We believe our view is consistent with the fact that publicity is more likely than not to lead to a miscarriage of justice, and is consistent with the general principle that a person is innocent until proven guilty.
6. We are concerned that the proposed threshold for publicity – that of being **charged** with an offence is inadequate. If implemented, all it would do is result in changed behaviour by the Police and Crown Prosecution Service. In order to gain publicity charges might be brought more for tactical reasons, and in cases where other wise they might not be considered.

DO YOU DISAGREE WITH THE GOVERNMENT POSITION IN CONTINUING TO CLOSELY MONITOR THE POSITION AND THE EFFECTIVENESS OF THE OPERATION OF THE ABOVE SAFEGUARDS?

1. The position in relation to anonymity requires monitoring to the extent that the proposals do not go far enough. What is needed is positive action to achieve anonymity now, and then to monitor its effectiveness.

DO YOU AGREE THAT ALL ALLEGATIONS THAT ARE WITHIN THE SCOPE OF THIS CONSULTATION PROCESS ARE FOLLOWED UP REGARDLESS OF WHETHER THE PERSON INVOLVED RESIGNS HIS OR HER POST

1. F.A.C.T. accepts that all allegations of abuse must be investigated. We agree however that no inference should be drawn from an employee's decision to resign once an allegation has been made against them. Resignation is a neutral act – it neither implies guilt or innocence.
2. In our view local authorities/governing bodies already have sufficient powers to investigate complaints of abuse when a person has resigned using the powers given to them under child protection legislation. (Section 47 of the 1989 Children Act, and subsequent Acts which give local authorities the power to refer cases via the [POCAT](#) or [POVA](#) route.)

DO YOU AGREE THAT LOCAL AUTHORITIES SHOULD IDENTIFY A SENIOR OFFICER TO TAKE RESPONSIBILITY FOR OVERSIGHT OF ALLEGATIONS OF ABUSE AGAINST EDUCATION STAFF FOR THE AUTHORITY

1. We share the Government's concern that the arrangements made for investigation of abuse allegations varies between Local Authorities, Police Forces, and Social Services. In our experience many procedures are outdated and do not, for example, take into account important changes in legislation such as Human Rights Act, or changes in public policy e.g. recent Government guidance, or best employment practice e.g. [ACAS](#) Guidance. As a result the standard of investigation is woefully inconsistent.
2. On the whole investigative practice is poor. It seems to us that very few investigating officers receive any training into investigative practice or employment procedures. All too often the accused person becomes the victim in a triangle of competing values involving the key players i.e. their managers/head teachers, child protection staff, and the local authority's/governing body's personnel/human resources staff. The position becomes further complicated should the police become involved.
3. Not surprisingly one sees a lack of leadership and a lack of objectivity. This is evident by the fact in many cases it is necessary to have strategy meetings about strategy meetings! What is needed is some clarity about the status of child protection meetings and their relationship to the disciplinary process.
4. F.A.C.T. supports the importance of ensuring that allegations of abuse are overseen by a senior manager. It does so from two perspectives. Firstly because those children (or vulnerable adults) who are genuinely abused need to know that everything is being done to protect them from such abuse. Secondly, it is important because abuse investigations have given rise to serious concerns that they might lead to miscarriages of justice and to entirely innocent people being accused. F.A.C.T. believes that if we are to have a meaningful model of investigation both perspectives are important. We also believe that whoever is selected to oversee these allegations is required to demonstrate what action is (or has) been taken to minimise the risk of a false allegations of abuse being made. We believe that the primary role of the overseer is to safe guard the **process** of investigation and to ensure that all relevant facts are established and evaluated - as required by [WorkingTogether](#)

DO YOU AGREE THAT THE POLICE AND SOCIAL SERVICES SHOULD IDENTIFY A SENIOR OFFICER TO OVERSEE ALLEGATIONS CASES FOR THE POLICE FORCE/SOCIAL SERVICES.

1. The involvement of the police should only take place where there is evidence of a possible crime having been committed. The different roles of the police and social services should not be blurred any further. There is already too much confusion. The system has too many social workers acting like police and too many police acting like social workers! The result is role confusion, poor investigative practice, and not infrequently injustice.

DO YOU AGREE THAT INDICATIVE TARGET TIMESCALES ARE SET FOR EACH STAGE OF THE PROCESS AND THAT STATISTICAL DATA IS COLLECTED TO MEASURE ACHIEVEMENT

1. For the reasons stated previously we caution against the use of performance targets which are related to time scales. We would much prefer a system whereby

the person overseeing the investigation has the power to require the parties to complete certain tasks by certain dates - the timescales depending the complexity of the investigation. It would be necessary, for example, to make allowances for the fact that historical allegations take much longer to investigate than other cases, and require more time in order to prepare ones defence to such allegations.

SHOULD THE LOCAL AUTHORITIES ALLEGATIONS MANAGER REVIEW THE PROGRESS OF CASES AT REGULAR FORTNIGHTLY INTERVALS (WITH HIS/HER OPPOSITE NUMBERS IN THE POLICE AND SOCIAL SERVICES WHERE THEY ARE INVOLVED IN THE CASE)

1. F.A.C.T. recognises the value of inter agency cooperation in cases of alleged abuse. It does not however accept the need for the police to be involved in any matter which falls short of alleged criminal behaviour.
2. The involvement of the police (directly or indirectly) raises an important issue about the status of any information shared and the use to which it may be put. Care will need to be taken that the existence of an untested allegation is not used for criminal record purposes, and that mere suspicion that an allegation might have some merit does not lead to information being included in any enhanced [Criminal Records Bureau](#) check. (F.A.C.T. is aware of a number of disturbing cases where wholly inaccurate information obtained during an investigation into an unreliable complaint of abuse has subsequently appeared on an enhanced CRB check.)

FOR THE PURPOSE OF THE PROPOSALS SET OUT IN THIS PAPER AN ALLEGATION SHOULD MEAN ANY COMPLAINT OR CONCERN HOWEVER, AND BY WHOEVER, RAISED THAT MIGHT INDICATE THAT A PERSON HAS HARMED A CHILD OR PUT A CHILD AT RISK OF HARM

1. F.A.C.T. would suggest that the exact wording should follow that used in the 1989 Children Act where the test is significant harm. (The statement as suggested would require intervention in genuine accidents between say a teacher and pupil on the sports field or during drama activity.

FOR THE PURPOSE OF THE PROPOSALS SET OUT IN THIS PAPER AN ALLEGATION SHOULD MEAN ANY COMPLAINT OR CONCERN HOWEVER, AND BY WHOEVER, RAISED THAT MIGHT INDICATE THAT A PERSON HAS DISPLAYED BEHAVIOUR INVOLVING OR RELATED TO A CHILD THAT MIGHT CONSTITUTE A CRIMINAL OFFENCE.

1. For the reasons stated above we believe this should be strengthened to indicate:-
"..... displayed behaviour involving or related to a child that might constitute a criminal offence involving physical abuse, sexual abuse or neglect or cruelty"
2. As currently drafted offences such as unwittingly carrying more than the legally permitted number of children in a vehicle, and similar road traffic offences could trigger action.

FOR THE PURPOSE OF THE PROPOSALS SET OUT IN THIS PAPER AN ALLEGATION SHOULD MEAN ANY COMPLAINT OR CONCERN HOWEVER, AND BY WHOEVER, RAISED THAT MIGHT INDICATE THAT A PERSON HAS BEHAVED IN A WAY THAT RAISES CONCERN ABOUT HIS/HER SUITABILITY TO WORK WITH CHILDREN

1. In our view this is an unacceptable 'catch all'. Whilst we recognise that there may be other reasons for considering whether or not a person is unsuitable to work

with children e.g. being found in possession of child pornography, we are concerned that some local authorities are using child protection procedures to deal with staff capability/ill health issues.

2. F.A.C.T. strongly believes that in determining whether or not a person is unsuitable to work with children/vulnerable adults employers should use the same test that POCAT/POVA would use in that they must demonstrate that the persons actions have harmed a child/vulnerable adult before considering whether they are suitable or not to work with them.
3. We also strongly believe that it is important that LEA's/ Governing Bodies adopt an evidential approach, rather than, as at present, relying on a 'belief' approach to determining whether or not a person is unsuitable to work with children.
4. F.A.C.T. is particularly concerned that the evidential threshold is being steadily lowered in such cases. Instead of using the 'balance of probability' test local authorities are increasingly using the 'reasonable cause to suspect' We believe this raises fundamental issues of human rights, law and employment practice, and deplore this action.

SHOULD LEAs AND OTHER HUMAN RESOURCE PROVIDERS MAINTAIN A PANEL OR POOL OF PEOPLE SUITABLE TO CONDUCT DISCIPLINARY INVESTIGATIONS INTO ALLEGATIONS ON BEHALF OF SCHOOLS, AND PROVIDE AN INDEPENDENT REPORT FOR CONSIDERATION BY THE HEAD TEACHER AND THE CHAIR OF GOVERNORS IN DISCUSSION WITH THE LA ALLEGATIONS MANAGER.

1. F.A.C.T. believes it is important to be clear as to what is meant by an independent report – independent of what? Independent of the employer, independent of the issues involved, independent of the complainant and the accused?
2. F.A.C.T. believes that it is important that the investigation is carried out by a person who is competent in carrying out investigations, and by someone who has an understanding of the need to protect children/vulnerable adults AND an understanding of the rights of the accused and rules of natural justice.
3. We think there should be requirement that investigators examine the facts which support the allegation and the facts which contradict it. (Far too many investigations concern themselves only with facts that support the allegations. Contra indications that abuse took place are relevant facts and must always be considered when offered up as a defence. A reluctance to do so not only leads to a perception that there is a presumption of guilt but brings the investigative process into disrepute.
4. F.A.C.T. would also support the idea that in more complex investigations – especially those involving multiple assaults and/or historical abuse - that a team or panel of investigators be appointed to carry out the investigation. This panel might include someone who was a child protection expert, someone appointed because they represent the staff side, and some one, possibly the chair, appointed in order to safeguard the process of inquiry.
5. F.A.C.T. does not believe that delegating the powers of investigation to a single 'independent' third party will necessarily improve the situation. Depending on the choice it may well result in a conflict of interests and could result in legitimising

investigative bias in that, for example, the person appointed could be from an organisation which might be seen to have a vested interest in the outcome e.g. NSPCC, or perhaps hold a biased view.

6. Given widespread concerns about investigative malpractice in child abuse cases and the improper use of consultants and experts with vested interests (e.g. the Newcastle nursery nurse libel case, and the cot death mother cases) we urge the Government to establish a more ethical, evidence based model of investigation into abuse allegations. Such a model needs to promote the need to seek out the truth and recognise the impact the process has on both parties – the complainant and the accused.

SHOULD DISCIPLINARY INVESTIGATIONS AND REPORTS BE COMMISSIONED FROM AN INDEPENDENT INVESTIGATOR

IN ALL CASES EXCEPT WHERE AN OBJECTIVE INVESTIGATION CAN BE EASILY AND QUICKLY CONDUCTED BY A SUITABLY QUALIFIED OR EXPERIENCED PERSON FROM WITHIN THE SCHOOL'S RESOURCES.

1. Subject to the comments made above F.A.C.T. supports the need for the involvement of independent investigators. As previously indicated we stress that particular care is needed in defining who is independent. We do not accept for example that delegating this responsibility to 'child protection experts' would by itself improve the situation. We believe that if this model is to be adopted the people should be chosen for their independence and for their investigative expertise, and not because they hold a view which appears to be sympathetic to one side of the case or the other.

SHOULD THOSE COMMISSIONED TO REPORT AS SOON AS POSSIBLE AND NO LATER THAN 10 WORKING DAYS OF THE COMMISSION.

1. For the reasons previously stated F.A.C.T. does not believe that setting specific time limits is generally helpful. We accept that there should be a requirement for investigators to complete their task expeditiously as a possible. However, we have considerable reservations about the timescales suggested - particularly in so far as they may apply to cases in which there is police involvement, and in cases which relate to historical events.
2. We are particularly concerned about the suggestion of a 10 day limit. This is not only unrealistic but shows a complete lack of understanding of the effect abuse allegations have on staff. Allegations are invariably disabling and initially may render the person virtually incapable of defending themselves. In addition staff often find there are practical difficulties in gaining access to trade union officials, solicitors and others experienced in advising on these cases.
3. In more serious cases we think the issue of delay could be more effectively dealt with by a stage by stage approach to the investigation. We have set out below the necessary stages and indicate a target time-frame for each. In our experience these would still present major challenges to all the parties involved.
 - a. **Stage 1 - Complaint received.**
Decision taken to suspend staff member or redeploy them to other duties.
Suspension to be confirmed in writing within 2 working days.

b. **Stage 2 - Pre Hearing**

(to be completed within a further 10 working days) LEA/Governing Body to provide in writing:-

- Details why a person has been suspended,
- Full details of the complaint made against them (context, content and name of complainant(s))
- An outline of the evidence that is likely to be relied upon in support of the complaints.

F.A.C.T. believes this information should be made available before any investigative interviews take place.

c. **Stage 3: Investigative Hearing** (to be completed within 20 working days of stage 2)

- The investigative hearing should be conducted by a designated investigating officer who is answerable to a complaints manager, and with the assistance of at least one independent person chosen to ensure that the process of inquiry is fair to both sides. The accused should be permitted representation at this hearing. There should also be a requirement that the LEA/Governing Body minute the investigative hearing and make these available to the accused and their representative within 5 working days
- The purpose of the investigative hearing is to formally put details of the complaints to the accused, to hear their responses to the allegations made, and to determine, on the basis of the evidence gathered throughout the investigation and at the hearing, whether or not there is a case to answer.
- The Investigating Officer should be required to evidence that they have considered all relevant facts including those which are capable of supporting the allegation as well those which contradict it. In deciding whether there is a case to answer the investigative hearing should not make any pronouncements as to guilt or innocence.

d. **Stage 4: Consideration of the report of the investigating officer's report.** (to be completed within 10 working days of Stage 3)

- The report of the investigation officer should be considered by the LEA's/ Governing Bodies, complaints manager who will decide whether the case should proceed to a full hearing or not. This decision to be sent in writing to the complainant and the accused within 10 working days of stage 2 being completed.

e. **Stage 5 Full Hearings.**

Full hearings should take within 20 working days of being notified that a full hearing is to take place in order to allow the accused sufficient time to prepare their defence. Full hearings should take place before a specially selected panel and should normally take place over consecutive days. The accused should be permitted representation at this hearing. Any decision taken at this stage should be conveyed to the LEA/Governing body and the

accused and his representative within 3 working days of the hearing finishing.

f. **Stage 6 Appeal**

An appeal against any decision should be lodge within 10 working days of it being taken, and heard with 20 working days.

Other Matters.

1. We think the Government should offer specific advice to LEAs/ LA's and Governing Bodies concerning the action they can (and cannot) take should the matter progress to a police inquiry. In particular we would stress the need to ensure that the accused is offered emotional support from an uninvolved person throughout this period.

**SHOULD THE POLICE OBTAIN CONSENT FOR INFORMATION
GIVEN BY THE VICTIM AND WITNESSES TO BE USED FOR THE PURPOSE OF
DISCIPLINARY AND REGULATORY PROCEEDINGS AT THE TIME THEY TAKE STATEMENTS SO
THAT INFORMATION CAN BE DISCLOSED QUICKLY IF APPROPRIATE.**

- 1 F.A.C.T. welcomes this suggestion which is already accepted as good police and employment practice. We believe that there should also be a presumption that any statements relied on by the investigative officer to support the allegations made will routinely be shared with the accused. It is however necessary to stress that this system will only work if the information is shared with the accused from the outset, and is presented without any editing or deletion.
2. F.A.C.T. also believes that there should be a requirement that every statement taken (whether by the police or by the LEA's/Governing bodies own investigators) by an employer in pursuit of an investigation of abuse should be shared with the accused whether or not it is to be produced in evidence. In other words there should be a requirement that both used and **unused** material should be made available to the accused and his representative.

DO YOU HAVE ANY OTHER COMMENTS YOU WISH TO MAKE ON THE PROPOSALS?

- 1 F.A.C.T. appreciates being consulted on these matters which with some reservations F.A.C.T welcomes. We acknowledge that the Government have a difficult balancing act to achieve - that of safeguarding the welfare of children, of protecting the rights of staff, minimising the disruption allegations (particularly false ones) cause to other children and staff.
- 2 F.A.C.T. is concerned that insufficient support is given to teachers who are accused of child abuse. We have been involved in some very tragic cases in which individuals have taken their life having been accused of abuse. In every case a lack of support and understanding from their employers has been identified as a contributory factor in these deaths. We therefore suggest the Government give greater emphasis to the need to provide ongoing support to the accused throughout the investigative process, and evidence that they have done so

3. F.A.C.T. accepts that on occasion teachers sometimes abuse children. All we ask is that the Government (and others) accept that children (whether as young people or later in life as adults) sometimes make exaggerated, false or indeed malicious complaints of abuse, and that teachers (and carers) are especially vulnerable to such complaints.
4. We strongly believe there should be both zero tolerance of abuse AND zero tolerance of false accusations in schools and care homes. We believe more action needs to be taken by the Government, and by LEA's/Governing bodies (and others) to achieve this.
5. We are particularly concerned that there is a serious crisis of confidence emerging in the child protection system. Investigative standards are poor. Somewhat paradoxically child protection social workers are too concerned with 'agency protection' than the pursuit of truth. We see no reason why child protection agencies cannot admit to the fact that sometimes they get things seriously wrong, and that sometimes children (and adults) are minded to make false allegations.
6. Far too often there is an over-riding presumption of guilt and a great reluctance to accept the need for a systematic, evidential based approach to. This is perhaps one reason why increasingly local authorities are engaged in longstanding defence of their actions in child abuse cases. People who have been falsely accused have a right to be cleared.
7. F.A.C.T. is concerned that in wanting to address the problem of false allegations (which we believe the Government has seriously under-estimated) they run the risk that in making the system more efficient (in terms of speeding up the process of investigation) they will increase the likelihood that justice will miscarry.

FACT/MB