

## Running an investigation



**Fiona Scolding QC**

## Running an investigation

- When
- How
- Dealing with appeals/complaints

## When?

- The disciplinary guidance suggests that an internal disciplinary investigation to determine sanctions and/or exclusion in respect of an alleged perpetrator can occur contemporaneously with police and/or social services action.
- BUT
  - (a) A referral to children's social care should be made where "a child has been harmed or is at risk of harm" – which involves most cases of assault or even harassment without assault.
  - (b) If there is a report of rape, assault by penetration, or sexual assault, then the starting point is that it should be passed on to the police – in parallel with children's social services.

## Issues with referrals – Police

- (1) Making the referral to those who are RASSO officers (you may well need to liaise with the LCSP to try and find out how to access these specialist officers) which enables you to have access to more specialist officers.
- (2) Otherwise, you end up with a crime reference number but maybe little else.
- (3) Timings – a police investigation could easily take a year before charge – what do you do in the meantime?
- (4) Is it realistic to have a safety plan in place for that length of time?
- (5) Police providing advice NOT to investigate pending their investigation – what should a school do?

## Issues with referrals – Social Care

- Different “thresholds” for different local authorities as to whether or not social care will investigate and/or provide advice .
- This varies wildly (and is the subject of much debate nationally)
- If they do investigate – will assess and examine both the complainant and the alleged perpetrator
- May well make referrals to have specialist support.
- What do you do in the meantime?

## Safety plans

- School has duty to put in place "safety plan"
- Do they work?
- How practical are they in the context of most schools?
- Ensuring sufficient therapy and support – what is out there?

## If no criminal prosecution

- The vast majority of cases do not result in a criminal charge and/or prosecution
- What do you then do?
- No automatic assumption you can/will get the police information (complainant will need to give consent and/or court order)
- Social services may also not give you information (again dependent upon consent )
- Need to undertake an investigation which is fair to both victim and complainant.
- NFA or not charging does not mean that there is not a case to answer on a disciplinary basis.

## Investigation

- Current guidance is inadequate on this issue.
- Is the complainant fit to be interviewed? If not, is there material which lead to the referral which is sufficient.
- Can the alleged perpetrator be interviewed – and if so, what are the implications of this
- Ensuring that the investigator has some understanding of (a) trauma informed approaches and (b) how to ask a non leading question.
- Very rarely surrounding information (save for texts/whats app between complainant and perpetrator)
- Using external investigators who have some experience of investigating sexual assaults.



## Investigation (basics of natural justice)

- The alleged perpetrator has a right to know of the evidence against them
- Be careful about anonymizing witness evidence (one has to have a balance between the rights of the other children and the alleged perpetrator to know who is accusing them)
- Ensure that they have access to relevant texts/whats apps/other social media

## Investigations (previous sexual history)

- This is not a criminal trial: someone's previous sexual history is nearly always irrelevant.
- Alleged perpetrators may wish to use/rely upon someone's sexual history – need to be very careful and there is a requirement for a careful balance.
- The nature of their previous sexual relationship does not mean that the sex on that occasion was consensual .

## Dealing with complainants

- They will often be reluctant to report and/or continue with cases because of a fear of "upsetting their friends"
- How to ensure that the investigation is sensitive but also fair to all parties.

## Hearings

- Should there be cross examination of the complainant and alleged perpetrator?
- If not direct xx, how make the hearing fair (and is that sort of xx needed)?
- Training for governing body so they understand sexual violence, have had up to date training on the relevant guidance but also that “rape myths” and misunderstandings about consent – have a 21<sup>st</sup> century understanding of these issues
- Knew about a trauma informed approach.

## Decisions

- Decisions made “on the balance of probabilities”.
- In sexual offending, it is usually one person’s word against another.
- The head has to make that decision.
- You cannot hide behind “absence of corroborative evidence”.
- Both investigators and those who make the decisions (the heads) need training
- Needs to be much better DFE guidance than currently exists.

# Thank you for listening

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