

## **Dealing with Allegations of Abuse against Staff - RBAir**

### **Legislation / guidance that informs this policy:**

- The Children Act (1989)
- Section 175 of the Education Act (2002) (local authorities, governing bodies of maintained schools and institutions in the further education sector)
- Section 157 of the Education Act (2002) and the Education (Independent School Standards) (England) Regulations (2010, updated March 2016)
- The Children Act 2004
- Section 11 of the Children Act (2004) (other agencies)
- Sections 141F, 141G and 141H3 of the Education Act (2002)
- Teacher Misconduct: the Prohibition of Teachers (Oct 2015)
- Keeping Children Safe in Education (DfE Sept 2019)

### **Other Red Balloon policies that should be read in conjunction with this one:**

- Staff Code of Conduct
- Complaints
- Whistleblowing
- Safeguarding

### **Statement of Intent**

Red Balloon acknowledges the importance of protecting all members of its communities (students and staff) from malpractice or false allegation of such. The following policy reflects the requirements of the DfE Guidance provided in Keeping Children Safe in Education (Sept 2019).

Red Balloon seeks to ensure the highest quality of practice in all areas of its work. In pursuing that aim, we encourage anyone who has concerns about practice to raise them. Where the raising of such concerns is so serious that it suggests serious malpractice on the part of a staff member, then Red Balloon strives to investigate carefully with due regard to the needs of the

complainant(s) and the person against whom the allegation is made.

## **Responsibility for Implementation**

It is the responsibility of all managers within Red Balloon to ensure that any allegations of abuse are dealt with objectively and in accordance with this policy.

### **Principles:**

Red Balloon of the Air (RBAir) places the following statement from the 2012 statutory guidance as central to this policy: ***“The procedures for dealing with allegations need to be applied with common sense and judgement.”***

RBAir recognises the importance of having procedures for dealing with allegations, and takes on board the recommendation of the DfES document Safeguarding Children in Education (DfES 2004/2005). The organisation seeks to give all staff and volunteers an understanding of what to do if they receive an allegation against another member of staff or they themselves have concerns about the behaviour of another member of staff. This policy should make it clear that:

- Red Balloon of the Air is committed to ensuring the health, welfare and safety of all members of the Red Balloon of the Air community (staff and students).
- As part of that commitment, Red Balloon of the Air will ensure that no person who behaves in an unsuitable, inappropriate or criminal fashion towards young people is allowed to work within the organization.
- All allegations should be reported as soon as they become apparent. In the first instance to the RBAir Headteacher, or, should the allegation concern the Headteacher, to a member of ‘Group’. Any allegation concerning any member of ‘Group’ (the organisation’s management body) should be made directly to the Chief Executive.
- In response to an allegation all other options should be considered before suspending a member of staff: suspension should not be the default option. An individual should be suspended only if there is no

reasonable alternative.

- Every attempt will be made to maintain confidentiality.
- It is in everyone's interest to resolve cases as quickly as possible.
- Investigations will be fair and thorough.
- The fact that a person tenders his or her resignation, or ceases to provide his/her services, must not prevent an allegation being followed up in accordance with these procedures.
- Allegations that are found to be malicious should be removed from personnel records; and any that are unsubstantiated, unfounded or malicious, should not be referred to in employer references.
- In those cases wherein students are found to have made malicious allegations, consideration will be given as to whether they can remain within the RBAir community. If it is believed that a criminal offence has been committed, then further action may be taken.

### **Duties as an employer:**

Red Balloon of the Air recognizes that it has a duty of care to all its employees, and will, therefore, ensure that effective support is provided for anyone facing an allegation and provide the employee with a named contact if they are suspended.

This policy concerns the management of cases of allegations that might indicate that a person is unsuitable to continue to work with children in their present position, or in any capacity. The policy will be followed in any case wherein it is alleged that any member of staff (including volunteers) is alleged to have:

- behaved in a way that has harmed a child, or may have harmed, a child;
- committed a criminal offence against or related to a child;
- behaved towards a child or children in a way that indicates he or she is unsuitable to work with children.

In any such case, Red Balloon of the Air management will ensure that the allegation is dealt with quickly, in a fair and consistent way that provides effective protection for the child, and, at the same time, appropriately supports the person who is the subject of the allegation.

**Process:**

*NB Throughout the remainder of the policy where a responsibility or role is ascribed to the RBAir Headteacher, it is expected that it will be carried out together with a member of 'Group', or, if the allegation made is against the Headteacher or a member of 'Group', then a designated person from within 'Group' will carry out the functions.*

*Any person (student, staff, volunteer) working within Red Balloon should raise a concern about the practice of a member of staff or volunteer if they believe that something that that member of staff has done, or is doing, is contrary to Red Balloon practice, or, conceivably, constitutes something that will lead to disciplinary or criminal action being taken.*

Once an allegation has been made, the person to whom it is made (headteacher or member of group, or chief executive) must consider the nature of the alleged 'offence'...

In considering each allegation (throughout the process) the following 'categories of conclusion' should be considered:

- a. **Substantiated** – there appears to be sufficient identifiable evidence to prove the allegation.
- b. **False** – there is sufficient evidence to disprove the allegation;
- c. **Malicious** - there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false.
- d. **Unfounded** – there is no evidence or proper basis that supports the allegation being made. This conclusion 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.
- e. **Unsubstantiated** - this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

1. If the allegation is deemed to be of a criminal nature, then the local authority safeguarding officer must be alerted.
2. If it is deemed not to be criminal and not to pose physical or emotional harm to a student, then internal action should be taken to ensure that the issue is addressed. This will entail a process as per that described within the organisation's complaints procedure policy.

Red Balloon of the Air is committed to ensuring that all allegations are followed up and taken seriously. It is equally committed to ensuring that each case is considered fairly and that, in any case wherein it is considered that an allegation has been made wrongly, unfairly or maliciously, then no damage is done to the standing or career of the person against whom the allegation was made.

In those cases wherein the local authority safeguarding officer is alerted, the Local Authority (LA) designated officer(s) will discuss the allegation with the coordinator and / or member of Group to confirm details of the allegation and establish that it is not demonstrably false or unfounded. This information sharing will be, in the first instance, on an informal basis. The LA designated officer will make an informed decision regarding the necessity of any further action: for example whether there is a need for a formal strategy meeting, and who needs to be made aware of the allegation (possibly chair of trustees, parents or the accused). Each case brought to the LA designated officer may be different and therefore may result in a different course of action.

If there is cause to suspect that a child is suffering or is likely to suffer significant harm, or a possible criminal offence might have been committed, the LA designated officer will request that a strategy meeting should be convened immediately. The Headteacher, after discussion with the LA designated officer, should inform the accused person about the allegation as soon as possible. Where a strategy discussion is needed, or police or children's social care may need to be involved, the coordinator will be advised not to inform the accused person until those agencies have been consulted, and have agreed what information can be disclosed to the person.

A Local Safeguarding Children's Board (LSCB) strategy meeting will be convened when an allegation is made (and considered to be both

substantiated and of sufficient severity) against an individual who works with children. This meeting will include senior representatives from health, police, the local authority, and legal services as well as the coordinator or the line manager of the accused. The meeting will normally be convened within three working days of the decision to meet being taken.

The strategy meeting will focus on the suspected or actual risk to children posed by the adult about whom there are concerns raised or allegations made. In a strategy discussion, or during the initial evaluation of the case, the agencies concerned will share all relevant information they have about the person who has made the allegation and about the accused member of staff. An agreement will be reached in the strategy meeting regarding who will carry out an investigation and how this will take place, if it is deemed necessary. This will include consideration of the need to undertake:

- a child protection investigation,
- a criminal investigation,
- fact finding under the complaints procedure.

Consideration will be given as to whether the accused member of staff needs to be suspended from contact with children; in line with current guidance, however, this is not the default position – a ‘sensible’ decision will be reached. Further consideration will be given, if necessary, to the relevant support mechanisms, for the child or children against whom the alleged offences have been committed and the accused member of staff.

### **Communication:**

The Headteacher will inform the parents or carers of a child or children involved about the allegation (if they are not already aware of it) as soon as possible after discussing the allegation with the LA designated officer. The parents should also be kept informed by the coordinator about the progress of the case, and told the outcome where there is not a criminal prosecution, including the outcome of any disciplinary process (NB the deliberations of a disciplinary hearing, and the information taken into account in reaching a decision cannot normally be disclosed, but the parents or carers of the child should be told the outcome). The content and discussion may be agreed between the coordinator and the LA designated officer. The Headteacher will also keep the accused member of staff informed of the progress of the case and consider what other support is appropriate for the

individual. A criminal investigation may result in communication directly from the police. The LA designated officer will discuss with the coordinator how best to inform the individual of any updates.

### **Suspension:**

At any stage throughout the process, the accused member of staff may be suspended, without prejudice (this is a neutral act, and conveys no indication of 'guilt'), on full pay from work, whilst further investigations take place. This course of action will be appropriate where:

- there is a cause to suspect a child is at risk of significant harm;
- the allegation warrants investigation by the police;
- the allegation is so serious that it might be grounds for dismissal.

### **Conclusion of a case:**

If the police elect to pursue criminal proceedings, then, should the person against whom the allegation has been made, be found guilty, the court will decide the appropriate action to be taken in legal terms – in employment terms, the person's contract will be terminated immediately. The police will ensure that the person's name (if appropriate) is placed on any necessary lists (eg List 99) and that records are maintained so that, should the person seek further employment at a future date, the necessary information will be provided to any prospective employer.

If the investigation is of a non criminal nature, the outcome of the process will be shared with the parents of the child or children concerned after taking advice from the LA designated officer. The employee will be made aware of the outcome and of any action points agreed as a result of the investigation. The LA designated officer(s) will discuss with the coordinator whether a referral should be made to the DfE for consideration of List 99 action, or to any other pertinent agencies.

Where, on conclusion of an investigation, it is decided, that a person who has been suspended can return to work, the coordinator will consider how best to facilitate that.

Following any disciplinary action, a comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, will be kept on the

employee's file, and a copy provided to the employee concerned. The purpose of the record is to enable accurate information to be given in response to any future request for a reference if the person has moved on.

Information will also be held on a database that can only be accessed by LA designated officers. The database will provide clarification in cases where a future DBS check reveals information from the police about an allegation that did not result in a criminal conviction. This course of action will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record will show what action was taken, and, if appropriate, that the allegation was unfounded. The record should be retained at least until the person has reached normal retirement age, or for a period of 10 years from the date of the allegation whichever is longer.

### **Reporting outcomes to external agencies**

Red Balloon will report promptly to the DBS any person (whether employed, contracted, a volunteer or student) whose services are no longer used for regulated activity and the DBS referral criteria are met, that is, they have caused harm or posed a risk of harm to a child. Red Balloon may have ceased to use a person's services through:

- dismissal;
- non-renewal of a fixed-term contract;
- no longer engaging/refusing to engage a supply teacher provided by an employment agency;
- terminating the placement of a student teacher or other trainee;
- no longer using staff employed by contractors;
- no longer using volunteers;
- resignation;
- voluntary withdrawal from supply teaching, contract working, a course of initial teacher training, or volunteering.

Any report made will include as much evidence about the circumstances of the case as possible. Failure to make a report when required constitutes an offence. 'Compromise agreements' cannot be used to prevent a referral being made to the DBS when it is legally required, nor can an individual's refusal to cooperate with an investigation.

The proprietors of Red Balloon of the Air hold a legal duty to respond to requests from the DBS for information they hold already, but they do not have to find it from other sources.

Red Balloon of the Air managers (senior leadership team and Group) are also under a duty to consider making a referral to the NCTL (National College for Teaching and Leadership) where a teacher has been dismissed (or would have been dismissed had s/he not resigned) and a prohibition order may be appropriate. The reasons such an order would be considered are: 'unacceptable professional conduct', 'conduct that may bring the profession into disrepute' or a 'conviction, at any time, for a relevant offence'. Managers should refer to 'Teacher misconduct: the prohibition of teachers (October 2015)' or the NCTL website for guidance as to when such referral is necessary.

**Confidentiality:**

All allegations will be treated seriously and with discretion. Proceedings and records in connection with the allegation will be kept as confidential as possible, but employees must appreciate that formal investigations cannot always be kept on an entirely confidential basis.

Policy updated (Sept 2019) by Bob Sproson, Director of Education - for annual review