

Safeguarding Children: dealing with low-level concerns about adults

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Introduction

Ensuring that all staff and volunteers who work with children are suitable to do so is one of the most important aspects of an organisation's safeguarding duties. The early identification and appropriate management of safeguarding concerns about adults is an essential part of this. Where such a concern reaches the threshold of an allegation, clear guidance exists on how organisations should report, record and handle that allegation. However, the position is much less clear where a concern falls below that threshold.

Creating a culture in which all concerns about adults (including those that do not meet the threshold of an allegation) are shared responsibly and with the right person, and recorded and dealt with appropriately, is critical. If implemented correctly, this should encourage a more open and transparent culture; enable organisations to identify concerning behaviour early; minimise the risk of abuse; and ensure that adults working in the organisation are clear about professional boundaries and act within these boundaries, and in accordance with the ethos and values of the organisation.

This article draws on academic research and serious case reviews to explain why and how organisations can introduce a formal policy, or create a culture, that enables staff to share any concerns, and how organisations should respond to concerns about adults that do not reach the threshold of an allegation.

Concerns that meet the threshold

Working Together to Safeguard Children (March 2015) ("*Working Together*") makes it clear that any concern about an adult working with children that meets the threshold of an allegation, should be reported to "*a senior manager within the organisation*" - who should report it to the designated officer of the local authority (previously called LADO) within one working day. *Working Together* states that an allegation includes all concerns that a person who works with children may have:

- *behaved in a way that has harmed a child, or may have harmed a child;*
- *possibly committed a criminal offence against or related to a child; or*
- *behaved towards a child or children in a way that indicates that he or she would pose a risk of harm to children.*



“ Getting these points right should create a solid foundation to a transparent culture in which all concerns are shared openly and acted on appropriately ”

The obligation to report is explicitly stated to apply to schools and colleges, faith organisations and voluntary and private sector organisations (amongst others).¹ However, in practice, all organisations working with children should take this action. Schools are subject to additional guidance set out in *Keeping Children Safe in Education* (September 2016) ("KCSIE"). This requires concerns about staff and volunteers to be reported to the Head - with the option to report concerns via the designated safeguarding lead if they wish. Concerns about the Head should be referred to the chair of governors, chair of the management committee or proprietor as appropriate.²

More detailed guidance is set out in Part 4 of KCSIE on handling allegations once they have been reported internally. Although this guidance only applies to schools, it could usefully be applied to any organisation working with children.

What about concerns that do not meet the threshold?

Neither WTSC nor KCSIE provides any formal mechanism for reporting or handling concerns about adults working with children that do not meet the threshold of an allegation.

However, it is possible to introduce a mechanism whereby lower level concerns (that do not reach the threshold) are shared with a designated safeguarding member of staff in accordance with an organisation's safeguarding policy. The importance of this is illustrated by various serious case reviews and academic research.

Research on institutional child sex offenders: Marcus Erooga

In our Child Protection Unit here at Farrer & Co, we work with leading individuals in the field like Marcus Erooga - an expert safeguarding consultant and author of the highly respected book *Creating Safer Organisations: Practical Steps to Prevent the Abuse of Children by Those Working With Them*.³

Erooga and colleagues' research with offenders illustrates what institutional offenders can teach organisations about how to prevent abuse and build strong safeguarding cultures. Those interviewed for the research had worked in a range of occupational settings (including schools, sports clubs, army and sea cadet organisations, a choir group and a local authority), and had sexually offended in organisational positions of trust. A number reported *work related stressors* (including lack of support and working long hours), as well as *personal issues* (including having been abused themselves as children; recent loss of intimate relationships, questioning their sexual orientation and

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¹ HM Government (March 2015) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, pp 52-64. Specific statutory duties are placed by Section 11 of the Children Act 2004 on a range of organisations and professionals working with children and families to promote the welfare of children and ensure they are protected from harm. In addition, further safeguarding duties are placed on individual organisations through other statutes, as explained in Chapter Two of *Working Together 2015*

² Department for Education (September 2016) *Keeping children safe in education: Statutory guidance for schools and colleges*, Part 1, paragraph 31

³ Erooga, M., Allnock, D. & Telford, P. (2012) *Sexual Abuse of Children by People in Organisations: What Offenders can Teach Us About Protection* in M. Erooga (ed.), *Creating Safer Organisations: Practical Steps to Prevent the Abuse of Children by Those Working With Them*, John Wiley & Sons, Ltd

a history of self-harm/suicidal thoughts). Some showed patterns of *rule breaking* more generally (including breaches of other rules), in addition to the abuse of children. *Grooming behaviours* included direct use of authority to offend, using material or practical benefits for victims, providing support for isolated children, favouring particular children, and use of alcohol, videos or sexual imagery amongst others. The method of commencing the abuse included the *erosion of boundaries*, slow progression to abuse, use of trust and authority, meeting the child's needs (including physical and emotional), and developing relationships with the child's family.

The research questions the view that all offenders are preferential, finding instead that some are preferential, some are opportunistic and some are situational. *Preferential offenders* are those who have a conscious desire to sexually abuse children, and who either do not see, or are not easily deterred, by obstacles. Jimmy Savile is a classic example of a preferential offender. *Opportunistic offenders* are those who abuse because potential victims are available and potentially vulnerable, and the organisational setting either inadvertently facilitates, or fails to prevent, abusive activity. *Situational offenders* are those whose propensity to abuse is previously unknown or unacknowledged, and their offending is specific to the set of institutional factors which potentiates their offending.

Boundaries

Based on the research Erooga elaborates on the concept of a "slippery slope" of boundary violations towards abuse, and explains that there are many stages on the slippery slope towards the breach of a boundary within a relationship. Sometimes initial infringements are part of a grooming process but at other times they are made innocently and with good intention. However, once boundaries are breached it then becomes more difficult to restore the relationship to one in which proper boundaries are respected. Furthermore, Erooga emphasises that organisations should not simply concern themselves with safeguarding boundaries. His research indicates that organisations in which boundaries are adhered to in every respect in which staff perform their role are likely to be the safest environments for children.

Action Points

Whether or not all child sex offenders are in fact preferential, there are a number of recommended actions that flow from Erooga's research and that organisations can take to minimise the risk of situational offending. They include:

- reducing the opportunity and acceptability of inappropriate behaviours;
- increasing the effort required to offend;
- increasing the risk and perception of the risk of detection;
- ensuring there are robust and effective staff support systems in place;
- not over-relying on DBS or overseas criminal records checks – they are essential but are not a silver bullet. A clear DBS check simply confirms that an individual has not been found to present a risk to children; it is not predictive about potential risk. Research shows that the majority of institutional offenders did not have a previous criminal record at the time they offended;

- the powerful effect of organisational culture – and the importance of clarity and congruence about values and expectations. As Erooga states, culture can best be described as “*the way we do things around here.*” It is about creating a robust, holistic safeguarding culture that everyone signs up to. As one Head Teacher recently commented, “*It is about building a culture of what is and isn’t acceptable here. What are we about as a school? What is the staff room like and is everyone buying into that?*” It forms the context within which people judge the appropriateness of their behaviour. An organisation’s culture will influence human behaviour and human performance at work, and it is vital to recognise the danger of cultural slippage. A Code of Conduct which is understood, accepted and followed by all adults associated with the organisation (including staff, volunteers, managers, directors, owners and trustees) is integral to this, and strong governance and leadership are vital.

All organisations would benefit from using the *Guidance for safer working practice for those working with children and young people in education settings* ([see link](#)), which is used by many local authorities and schools as a reference point for identifying low level behaviour, and informing their own Code of Conduct. Although created for schools and education settings, the principles are applicable across all sectors, and as guidance it is held in high regard by professionals within the safeguarding field.

As outlined below, if implemented correctly a mechanism whereby low level concerns are shared and acted on appropriately should help organisations to achieve all of the action points set out above.

Examples From Cases – Two Serious Case Reviews

Nigel Leat was a classroom teacher who taught at a first school in Somerset for fifteen years. A disclosure by a child to her mother in 2010 led to the discovery of his abuse. It is now known that 20 pupils were witnesses to or possible victims of sexual abuse by Nigel Leat. At a court hearing in May 2011 Nigel Leat pleaded guilty to 36 sexual offences, including 22 counts of sexually assaulting a child under 13 and eight counts of sexual assault by penetration of a child under 13.⁴

William Vahey was a history teacher who taught at ten international schools in nine different countries between 1972 and 2014. Vahey committed suicide in March 2014 following the discovery by a maid of indecent images of children on his computer. It is now known that he drugged and abused at least 54 students at an independent international day school in London where he taught for four years.⁵

In both cases a number of staff, parents and pupils discussed concerns with each other or a member of the senior management team. A number of these concerns, taken in isolation, were not treated by the school as meeting the threshold for reporting to the LADO at the time. For example, Vahey “*undermined other staff and was disrespectful to junior staff,*” and “*gave out chocolates and sweets in class [and] cookies linked to games during evening activities.*” Leat “*had favourite pupils within his*

⁴ North Somerset LSCB (2012), *The Sexual Abuse of Pupils in a First School: Serious Case Review*

⁵ Hammersmith & Fulham, Kensington and Chelsea and Westminster LSCB (2016), *Southbank International School: Serious Case Review*

class [who were] invariably girls, and were variously described by staff members as pupils who were less academically able, emotionally needy or vulnerable and pretty;" "had been taking photographs of children using his mobile phone," and "getting changed for PE in his class [which was] used as a thoroughfare by staff and pupils."

Many concerns were not reported to anyone. In the case of Leat, only 11 of the 30 recorded incidents were reported to the school. All staff interviewed for the Serious Case Review said that it was common knowledge amongst school staff that Leat allowed pupils to be over familiar with him, and *"spoke to and joked with his pupils in a manner which was inappropriate to his role."* As the Serious Case Review explains, staff were sufficiently concerned about Leat's behaviour to attempt to ensure that pupils identified as likely favourites of his were allocated to other classes on the basis that remaining in Leat's class might be emotionally harmful to them. However, these staff did not report their concerns to the school child protection officer or Head Teacher at the time.

Neither school had a formal mechanism for reporting, recording or handling these low level concerns. As a result, when they were reported, the concerns were shared with different people and each concern was dealt with in isolation. No one person was aware of all of the concerns, and no-one was therefore able to 'join the dots' and identify a pattern of concerning behaviour. Concerns, therefore, were either dismissed or, where they were investigated, they were viewed as isolated incidents and the staff member's explanation was accepted.

These and numerous other cases illustrate the importance of sharing, recording and handling low level concerns, so that concerning patterns of behaviour can be identified as soon as possible and appropriate action be taken swiftly in response.

Policy on low level concerns

This is a policy that enables staff to share any concerns - no matter how small - about their own or a colleague's behaviour.

As explained above, concerns here should not be limited to safeguarding – they could relate to behaviour which does not meet the professional standards expected in the organisation. The purpose of the policy is to help create a culture in which the clear values and expected behaviours which are set out in the Code of Conduct are lived and constantly monitored and reinforced by all adults working with children; and where these adults can be confident about sharing low level concerns, and the organisation can respond to breaches of the rules and Code – all of which should help to create a safer and more open culture. At the same time it is easy to see how such a policy, mishandled or miscommunicated, could risk creating the wrong kind of culture. The following aspects are therefore essential:

Clarity - the policy should be clear and accessible to all adults working with children. It should clearly set out what these adults should do if they have a low level concern, and how the organisation will investigate and record such concerns.

Implementation - the way in which the policy is communicated to staff is key. Carefully designed training that is engaging and includes scenario based discussions should encourage buy-in from staff and volunteers and help to achieve the policy's objectives. In contrast, poor communication of the policy can create suspicion, confusion and

toxicity which could be highly damaging to the organisational culture, decreasing rather than increasing reporting.

Allegations v concerns - the relationship between low level concerns and allegations should be made clear. For example, the person receiving the low level concern must always consider whether it meets the threshold for reporting to the designated officer of the local authority as an allegation. If they are in any doubt they should contact the designated officer for advice. Equally, a series of low level concerns may cumulatively meet the threshold and need to be treated as such.

Reporting lines – ideally all concerns should be reported to one person so that patterns can be identified. It may not be appropriate for that person to be the head of the organisation, as this may inhibit reporting. For example, for schools it may be appropriate for low level concerns to be reported to the DSL rather than the Head Teacher.

Handling concerns – handling concerns appropriately and proportionately will strengthen confidence of staff and volunteers in the organisation. In contrast, handling concerns disproportionately or inappropriately will decrease rather than increase reporting. The way in which concerns are handled, and the identity of the person handling them, will necessarily depend on the context and nature of the concern being raised.

Recording concerns - the treatment of personal data for the purpose of personnel files and references is important. KCSIE requires schools to retain a copy of all substantiated, unsubstantiated or false allegations on a staff member's personnel file (paragraph 170) but to refer only to substantiated allegations in references (paragraph 173). No guidance exists for the recording of concerns that do not meet the threshold for referral of an allegation. In our view, low-level concerns which do not individually or collectively meet the threshold for referral of an allegation, and where no other internal process has been instigated (for example, disciplinary, grievance or whistle-blowing), should be retained in a confidential, central safeguarding file but not on personnel files or used on references. Feedback we have received from staff in schools where a low-level concerns policy has been introduced has been that this distinction is central to creating a culture of openness and dialogue between staff and the DSL. The recording of information should be done following the exercise of sound professional judgement as to what information is necessary for safeguarding purposes. That information, once recorded, itself must be carefully treated, in terms of who has access to it, and who needs to know, oversee and review its contents (remembering that individuals may well have the right to access these records about them under data protection law).

Retention of records of lower level concerns – this question is not straightforward. KCSIE requires records of all allegations (save for malicious) that meet the threshold for referral to be retained until the accused has reached normal pension age, or for a period of 10 years from the date of the allegation if that is longer (paragraph 171). However, KCSIE does not include any guidance on the retention of concerns that do not meet the threshold for referral of an allegation. Furthermore, in her opening statement for the Independent Inquiry into Child Sexual Abuse ("IICSA"), the then Chair, Justice Lowell Goddard, advised a range of institutions "to take immediate steps to prevent the destruction of any files or data relating to children in their care or the staff who looked after them, and for the time being to suspend any routine destruction of such files under data protection legislation." In our view, provided, as above, they

are recorded carefully and responsibly, and employees are aware of what is being recorded and what will be made of it, and that access is limited strictly to those who need to know, then lower level concerns and concerns that meet the threshold for referral should both be retained unless and until further or post-IICSA guidance provides otherwise - the former on the central safeguarding file and the latter on the personnel file.

Oversight and review - the regular review of low level concerns is required to ensure that the concerns are being handled appropriately and proportionately, that no concerns meet the threshold of an allegation, and that any subtle patterns of behaviour are spotted.

Getting these points right should create a solid foundation to a transparent culture in which all concerns are shared openly and acted on appropriately. By contrast it can be hard to retrieve a situation if these areas are not considered carefully at the outset.

Is it necessary to introduce a formal policy?

Some organisations may feel they already have a culture whereby low level concerns are shared, which they would not want to formalise with a policy. We are not saying a policy has to be introduced but culture can be a very difficult thing to monitor and, in fact, we would gently challenge an organisation that says that it has such a culture to test it with, for example, a Common Room conversation, to establish that the perceived culture does in fact exist.

Culture can of course drift and in, for example, a schools group or a national organisation, it is particularly important to introduce principles to minimise the risk of one part of the organisation slipping away from what is held out to be the right approach by the centre.

In any event, whether or not an organisation decides to introduce a formal policy, training is vital to ensure everyone is clear.

Conclusion

Creating a culture in which all concerns about adults (including those that do not meet the threshold of an allegation) are shared responsibly and with the right person, and recorded and dealt with appropriately, is critical. In order to create and maintain such a culture, organisations can:

test their practice in relation to thresholds for sharing concerns about adults;

For example, by reviewing the concerns that have been shared (both internally and externally) in the recent past, and having an informal discussion with the adults working in their organisation.

encourage everyone in their organisation to share all concerns about adults, including those that do not meet the threshold of an allegation;

It is essential that this is done in a positive way that secures buy-in from staff and not in a way that could potentially create an atmosphere of suspicion or toxicity.

test the understanding of professional boundaries amongst the adults in their organisation and, where necessary, work with these adults to improve this;

For example, by discussing any "grey areas" and revising their Code of Conduct, in consultation with adults.

ensure that all concerns that do not meet the threshold of an allegation are recorded centrally so that any patterns can be spotted;

The recording of information should be done following the exercise of sound professional judgement as to what information is necessary for safeguarding purposes.

ensure that when a concern is raised, it is handled robustly, proportionately and sensitively;

Organisations should always handle unprofessional behaviour robustly, explaining to the individual why their behaviour is unprofessional, what they should do to remedy their behaviour going forwards, and what the consequences will be if they do not.

If you require further information on anything covered in this briefing please contact [Adele Eastman](#) or [Katie Rigg](#), or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Child Protection Unit](#) page on our website.

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