



Safer recruitment and managing allegations against staff

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What we will cover today

- The safer recruitment process: from planning a vacancy to offer of employment
- Pre-appointment checks and the SCR
- After employment commences
- Dealing with a safeguarding allegation against a member of staff

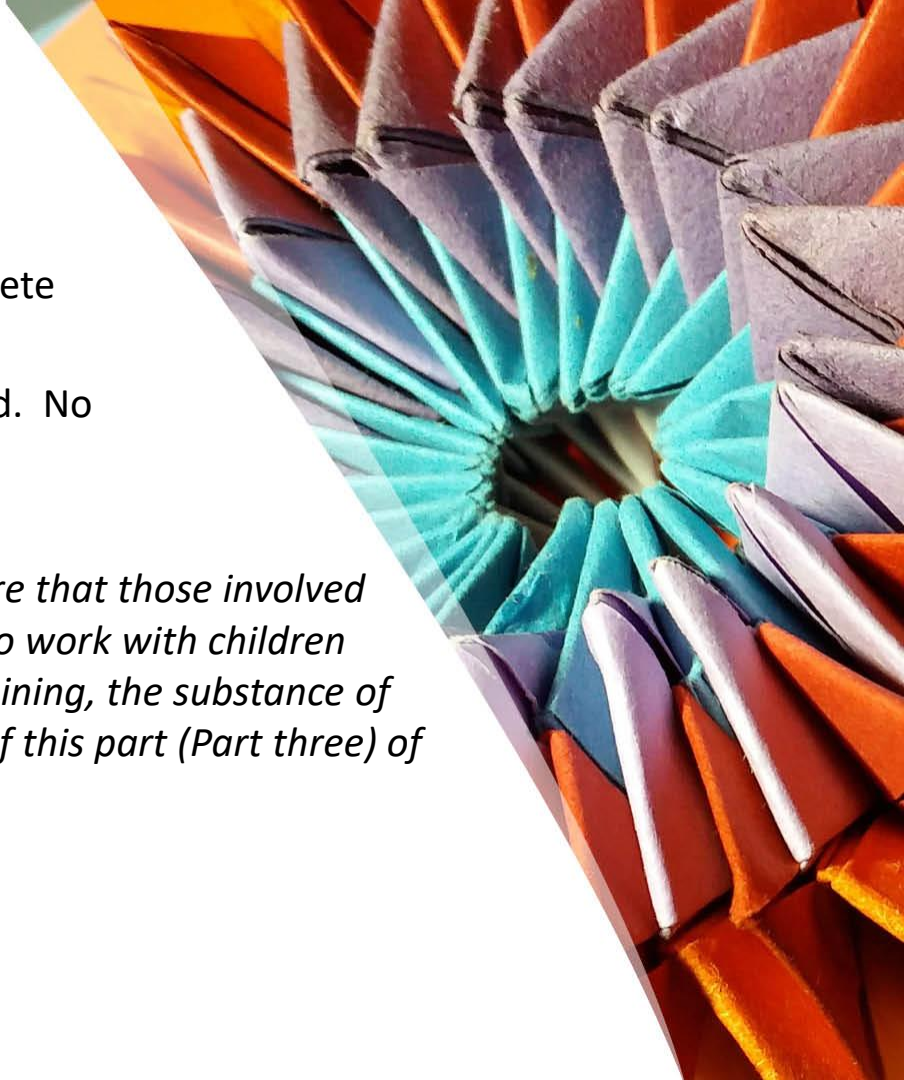
The safer recruitment regulatory framework

- **National Minimum Standards for Boarding Schools (NMS)** - March 2002 / 2010 / 2011 / 2013 / 2015 / **5 September 2022**
- **The Education (Independent School Standards) Regulations** 2003 / 2004 / 2007 / 2010 / **2014 (ISSRs)**
- Safeguarding Children: Safer Recruitment and Selection in Education Settings – 2005
- Safeguarding Children and Safer Recruitment in Education (**SCSRE**) - January 2007
- **Safeguarding Vulnerable Groups Act 2006**
- **Keeping Children Safe in Education (KCSIE)** – 3 April 2014 / March 2015 / July 2015 / September 2016 / September 2018 / September 2019 / 1 September 2020/ 1 September 2021 / 1 September 2022 / **1 September 2023**
- **Disqualification Under the Childcare Act (DUCA)** – 26 February 2015
- ISI Commentary on the Regulatory Requirements – March 2023 (no longer being produced)

Status of training

- SCSRE – one member of interview panel to complete accredited training
- KCSIE – training does not need to be DfE approved. No accredited training
- **KCSIE para 208:**

“Governing bodies and proprietors should ensure that those involved with the recruitment and employment of staff to work with children have received appropriate safer recruitment training, the substance of which should at a minimum cover the content of this part (Part three) of this guidance”
- VWV Certificate of Attendance





Keeping Children Safe in Education

- Do you have to follow it?
- All schools and colleges in England ***“must have regard to it when carrying out duties to safeguard and promote the welfare of children”***
- **KCSIE page 3:**

“We use the terms “must” and “should” throughout the guidance. We use the term “must” when the person in question is legally required to do something and “should” when the advice set out should be followed unless there is good reason not to.”
- Comply unless exceptional circumstances arise

KCSIE Part 3

Safer Recruitment



Safer recruitment: Whose responsibility?

KCSIE para 207:

*'It is vital that **governing bodies and proprietors** create a culture that safeguards and promotes the welfare of children in their school or college. As part of this culture, it is important that they **adopt robust recruitment procedures that deter and prevent people who are unsuitable** to work with children from applying for or securing employment, or volunteering opportunities in schools and colleges.'*

Safer recruitment: Whose responsibility?

KCSIE para 342:

- *'Safer recruitment is not just about carrying out the right DBS checks...'*
- *'Similarly safeguarding should not be limited to recruitment procedures..'*
- *'Good safeguarding requires a continuing commitment from **governing bodies and proprietors, and all staff** to ensure the safety and welfare of children is embedded in all of the organisation's processes and procedures, and consequentially enshrined in its ethos.*
- **This requires a coordinated whole school approach to safeguarding.**





Steps in the safer recruitment process

- Identifying a need to recruit
- Planning the vacancy:
 - job description
 - person specification
- Advertising
- Reviewing applications and shortlisting
- Interview and selection
- Offer of employment
- Pre-employment checks
- Single Central Register

Serious case review: Features of a safe culture

Southbank International School: Dame Moira Gibb - 20 January 2016

- An explicit safeguarding culture and ethos
- Clear policies and procedures which make it clear to staff what is expected at every level
- Courageous management who are prepared to act on concerns
- Staff who are prepared to challenge and raise concerns
- Children and young people having a voice and mechanisms for raising concerns which are taken seriously

Serious case review: Criticisms of the recruitment procedure

- The role was not advertised
- No job description or person specification
- An application form was not completed – reliance placed on an unsolicited CV
- A commitment to safeguarding was not mentioned in the recruitment materials or invitation to interview
- References not taken up until role offered (months after interview)
- Interview conducted by the Principal alone
- Too much reliance placed on on-line safer recruitment training

Job description and person specification

- Before advertising, plan the vacancy by drafting a JD and PS
- **KCSIE para 210** states that this should include:
 - the skills, abilities and experience required for the post;
 - the attitude and behaviours that the School requires of the post holder;
 - the School's safeguarding requirements i.e. to what extent will the role involve contact with children **and will it amount to regulated activity**

Advertising

- Once the vacancy is planned it can be advertised
- **KCSIE para 211:**
 - a statement about the School's commitment to safeguarding and promoting the welfare of children
 - a statement that safeguarding checks will be undertaken on all successful candidates
 - the safeguarding responsibilities of the post (as per the JD and PS)
 - whether the post is exempt from the Rehabilitation of Offenders Act 1974 (all posts that amount to regulated activity will be)
- Purpose?



Application form

- **What should it include? KCSIE para 214**
 - personal details including current and former names and NI number
 - date of birth
 - full employment history since leaving school and explanation for any gaps
 - details of present or last employment and reasons for leaving
 - qualifications (awarding body and date)
 - a statement of the personal qualities and experience the applicant believes are relevant to their suitability for the post
 - details of referees
 - **questions about health?**

Application form (cont'd)

- **KCSIE para 212:** where the role involves regulated activity with children the application form should include a statement that it is an offence to apply for the role if the applicant is barred from working with children
- Why use application forms?
- Can you accept CVs? **KCSIE para 215:** *'Schools and colleges should only accept copies of a curriculum vitae alongside an application form. A curriculum vitae on its own will not provide adequate information'*



Application form (cont'd)

- **KCSIE para 216:** *'shortlisted candidates should be asked to complete a self-declaration of their criminal record or information that would make them unsuitable to work with children.'*
 - **KCSIE para 217:** *'This information should only be requested from applicants who have been shortlisted. The information should not be requested in the application form to decide who should be shortlisted.'*
 - **We have taken questions about criminal records and 'suitability' out of the application form. We have left in the following:**
 - whether the applicant is barred from working with children
 - whether the applicant is prohibited from teaching or management
 - whether the applicant is disqualified from providing childcare
 - **Why have we taken this approach?**
 - All other questions about suitability are now in our shortlisted candidates suitability form

Candidate Information Pack

- Paragraph 3.29 of SCSRE
 - Application form
 - Job Description
 - Person Specification
 - Recruitment Policy
 - Child Protection Policy
 - Policy on recruitment of ex-offenders
 - Code of conduct for staff?
- Serious case review from 2016 restated that this is good practice

Shortlisting

- Due diligence on your candidates
- **KCSIE para 220:**
 - at least two people carry out the shortlisting exercise;
 - recommended that those people carry out the interview;
 - shortlisting should involve consideration of inconsistencies in the information provided, look for gaps in employment history and review the reasons for them; and
 - explore all potential concerns with an application



Shortlisting (cont'd)

- Other safeguarding and suitability aspects to explore:
 - name changes
 - time spent overseas
 - moving from a senior role to a more junior role
 - frequent job changes
- **Aim: systematic approach that is applied consistently**
 - document the process: Shortlisting Assessment Form
 - assess against the same shortlisting criteria



‘Online’ checks

- **KCSIE para 221:** *‘as part of the shortlisting process schools and colleges **should consider** carrying out an online search as part of their due diligence on the shortlisted candidates. This may help identify any incidents or issues that have happened, and are publicly available online, which the school or college might want to explore with the applicant at interview. **Schools and colleges should inform shortlisted candidates that online searches may be done as part of due diligence checks’***
- **How should this be approached?**
- **Potential for claims from unsuccessful applicants**



Invitation to interview

- What should it cover?
- How the interview process will be conducted
- Reasonable adjustments
- Documentation for starting the vetting process:
 - evidence of identity
 - evidence of right to work in the UK
 - evidence of qualifications
- Interview conditional upon these being produced

References

- **KCSIE para 222:** *'Schools and colleges should obtain references before interview, **where possible**, this allows any concerns raised to be explored further with the referee and taken up with the candidate at interview'*
 - a welcome change from KCSIE 2021
 - if you have a different approach, document it, apply it consistently, be able to discuss with inspectors
 - minimum requirement: references must be obtained before work commences

References (cont'd)

KCSIE para 223

- schools should not rely on applicants to obtain their own reference;
- schools should ensure that a reference is received from the applicant's current employer and is completed by a senior person;
- where the reference is from a school, the Head/Principal should confirm that the reference is accurate in respect of disciplinary investigations;
 - schools should always verify information with the person who provided the reference;
 - contact referees to clarify content where information is vague or insufficient information is provided
 - when schools provide a reference to another school, it should confirm whether they are satisfied with the applicant's suitability to work with children and provide the facts of any substantiated safeguarding allegations

References (cont'd)

Other issues to consider

- References received electronically
- Are purely factual references acceptable?
- What is a satisfactory reference?
- Disclosure of the reference

Checks completed by time of interview

1. Identity
2. Right to work in the UK
3. Qualifications or experience
4. Education and employment history
5. References
6. A self-declaration of:
 - any prohibitions or disqualification;
 - criminal records history;
 - whether named on the barred list

Interview

“The interview and recruitment process which led to Huntley’s appointment at Soham Village College was flawed, as the school principal admitted. This only goes to reinforce the findings of successive reports about the importance of the selection process...”

(Bichard Inquiry Report, Paragraph 58)



Serious case review: What to cover at interview

Four key areas common amongst child abusers in professional settings which could be explored at interview by value based techniques:

1. Awareness of professional boundaries;
2. Appropriateness of relationships with children;
3. Commitment to and evidence of taking action to protect children; and
4. Self-awareness

'Categories' of organisational sex offenders

Report for the **IICSA Residential Schools Investigation – Marcus Erooga (Aug 2019)**

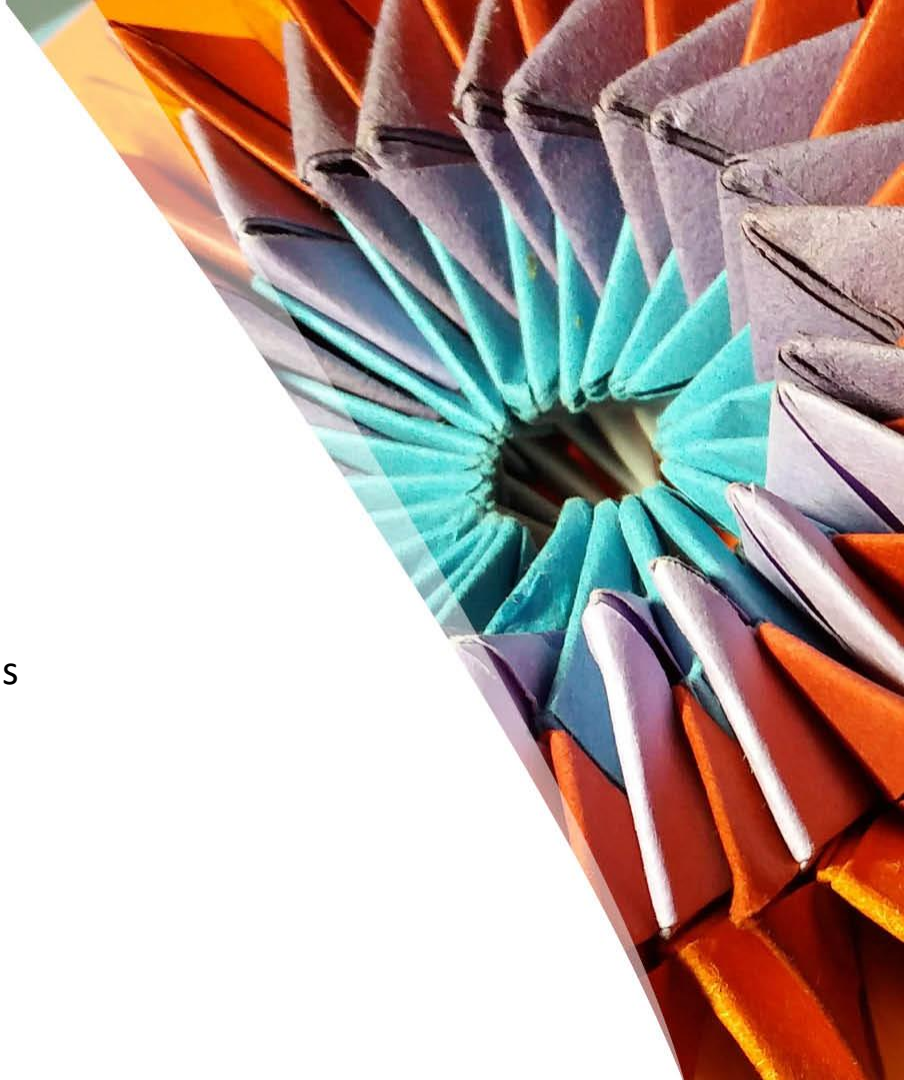
- **Preferential:** conscious desire to sexually abuse children and not easily deterred
 - **Opportunistic:** motivated to abuse, will do so if potential victims are available, vulnerable and organisation inadvertently facilitates, or fails to prevent, their behaviour
 - **Situational:** propensity to abuse is previously unknown or unacknowledged, abuse may represent an aberration in otherwise law abiding life
- Focus on those who are motivated to commit abuse tends to inform the general approach in policies and training

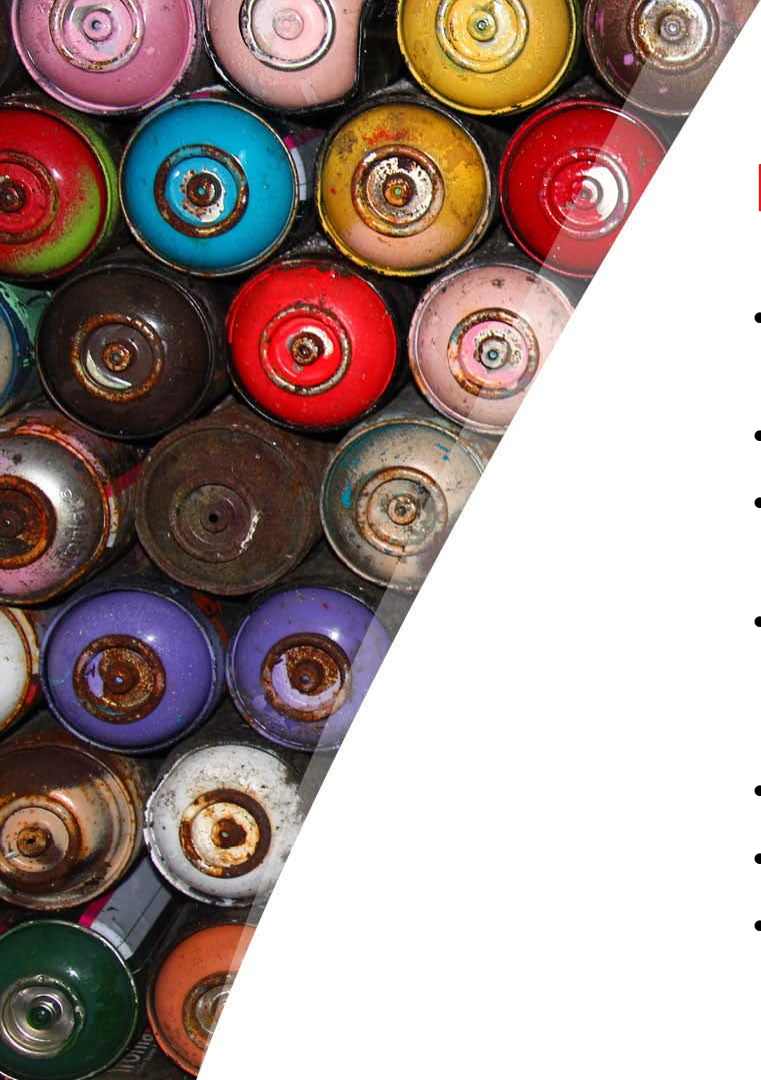
Scope of the interview

- **KCSIE paras 225-227** – areas to cover:
 - what attracted the candidate to the post;
 - their motivation for working with children;
 - their skills and experience of working with children (as relevant to the role);
 - probing of any gaps in education or employment history;
 - any implication that adults and children are equal;
 - lack of recognition or understanding that children are vulnerable;
 - inappropriate idealisation of children;
 - understanding of professional boundaries;
 - indicators of negative safeguarding behaviours;
 - past disciplinary action or safeguarding allegations

Questioning skills

- Open questions – how, what, tell me..?
- Probing questions – following up
- Closed questions – not too many
- Leading questions – avoid these
- Multiple questions – be wary
- Use a range of open, probing and closed questions





Interview Assessment Form

- Purpose - objective justification for decision to appoint or reject
- Complete promptly for each candidate
- Be objective about the candidate and focus on suitability for the role
- Confer with fellow members of the interview panel as soon as possible after each interview, review and agree overall outcome
- Risk management
- Retention
- Disclosure

Offer of employment letter

- Set out headline terms of offer
- **KCSIE para 232:** *'All offers of employment should be conditional upon satisfactory completion of the mandatory pre-appointment checks'*
- Why a conditional offer?
- Take care over the drafting of the specified conditions



Pre-appointment checks

The requirement to carry out pre-appointment checks

ISSRs, Part 4, paragraph 18

*“The standard in this paragraph is met if... the **proprietor carries out appropriate checks...and in the light of the information from the checks...the proprietor considers that the person is suitable for the position to which the person is appointed”***

The requirement to keep a Single Central Register

KCSIE para 268

*'Schools and colleges **must** maintain a single central record of pre-appointment checks, referred to in the Regulations as the register and more commonly known as the single central record'*

ISSRs, Part 4 paragraph 21

*"The standard in this paragraph is met if the **proprietor keeps a register which shows such of the information referred to in sub-paragraphs (3) to (7) as is applicable to the school in question"***





Format of the SCR

What is the legal requirement for the format of the SCR?

- **ISSRs Part 4, paragraph 21(2)**

“The register...may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form”

- Any format is therefore permitted
- However – it must contain the required information to be compliant
- **Single biggest source of inspection failure**



How do you complete the SCR?

- Separate entry for each individual
- Separate entry for each check
- What do the ISSRs 2014 say?
 - whether each check was completed: and
 - the date on which the check was completed or certificate received
- The use of 'N/A'
- Who completed the check?
- Notes

Key definitions

- **Staff:** *“any person working at a school, whether under a contract of employment, under a contract for services, or otherwise than under a contract but not including supply staff or volunteers”*
- **Regulated activity:**
 - paid work at a school;
 - carried out frequently, intensively or overnight;
 - in connection with the purposes of the school; and
 - giving the opportunity for contact with children
- In addition voluntary work must be unsupervised to amount to regulated activity
- Temporary or occasional paid work that does not involve teaching, supervising, caring for or driving a vehicle for children = not regulated activity

Key definitions (cont...)

Supervision (KCSIE Annex E):

- *“by a person who is in regulated activity;*
- *regular and day to day; and*
- *reasonable in all the circumstances to ensure the protection of children”*

Factors to consider when deciding whether supervision is reasonable:

- ages of the children, including whether their ages differ widely;
- number of children that the individual is working with;
- whether other workers are helping to look after the children;
- the individual’s opportunity for contact with children;
- how vulnerable the children are; and
- how many individuals would be supervised by each supervising worker



Who to include on your SCR

Must

- ISSRs: staff, supply staff and members of the proprietor body

What about:

- Self-employed individuals
- Staff employed by a third party
- Volunteers
- Leavers

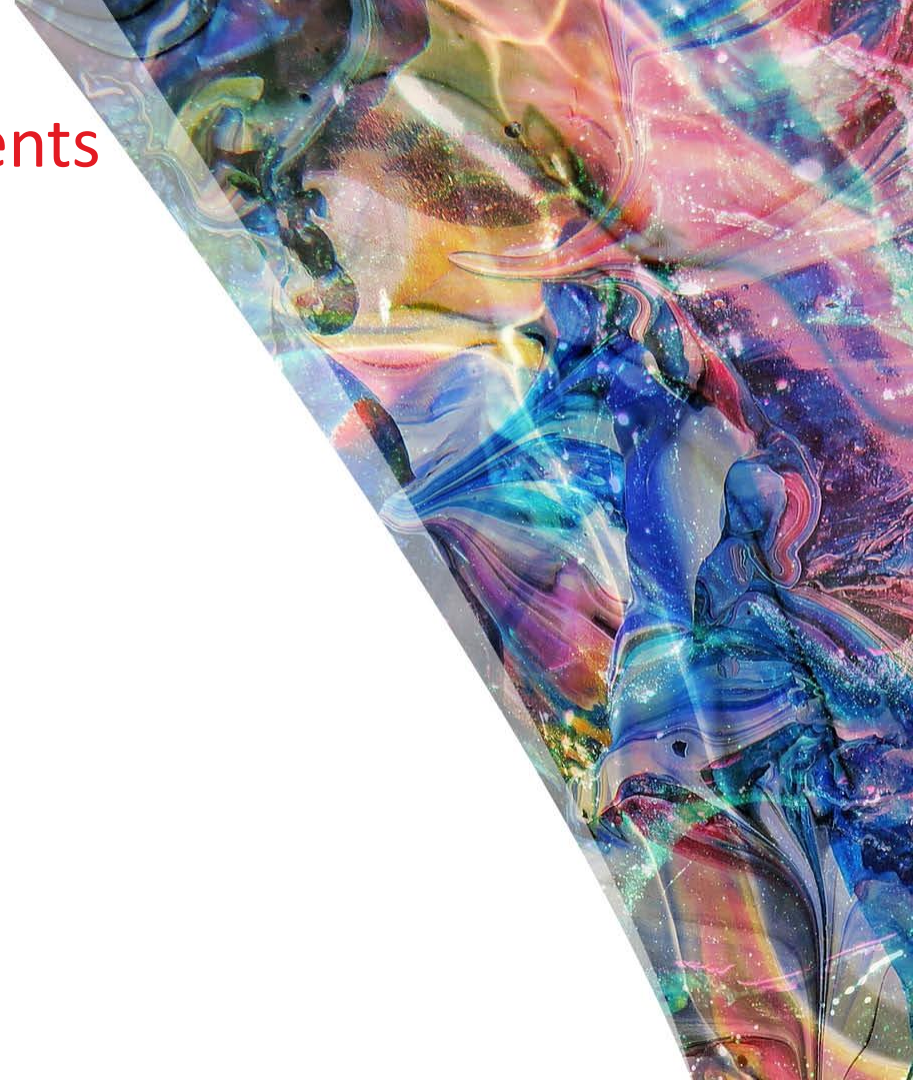
Required checks for staff appointments

1. Identity
2. Right to work in the UK
3. Qualifications
4. Employment history
5. References
6. Medical fitness
7. Enhanced DBS disclosure
8. Children's Barred List
9. Overseas checks
10. Overseas teaching sanctions
11. Prohibition from teaching
12. Prohibition from management
13. Section 142 direction
14. Childcare disqualification

Required checks for appointments to the proprietor body

1. Identity
2. Right to work in the UK
3. Enhanced DBS disclosure
4. Children's Barred List
5. Overseas checks
6. Prohibition from management
7. Section 142 direction

*Any other role specific check



Required checks for volunteers

KCSIE para 305: *'Under no circumstances should a volunteer on whom no checks have been obtained be left unsupervised or allowed to work in regulated activity'*

KCSIE para 306: *'schools and colleges should undertake a written risk assessment and use their professional judgement and experience when deciding what checks, if any, are required'*

1. Identity
2. Children's Barred List
3. Enhanced DBS disclosure
4. Any other role specific check e.g. childcare disqualification

Required checks for supply staff

1. Identity
2. Right to work in the UK
3. Qualifications
4. Employment history
5. References
6. Medical fitness
7. Enhanced DBS disclosure
8. Children's Barred List
9. Overseas checks
10. Overseas teaching sanctions
11. Prohibition from teaching
12. Prohibition from management
13. Section 142 direction
14. Childcare disqualification

Supply staff

- Who are supply staff?
- Who is responsible for carrying out the checks?
- Identity checking
- DBS certificate
- How do you record the checks on the SCR?



Contractors

How should contractors be treated for compliance purposes?

- ISSRs Regulation 2: “Staff” means: **“any person working at a school, whether under a contract of employment, under a contract for services, or otherwise than under a contract but not including supply staff or volunteers”**

If contractors are staff which checks are required?

- basic legal position – all checks apply;
- but see **KCSIE para 291**: ‘Schools and colleges should ensure that any contractor, or any employee of the contractor, who is to work at the school or college, has been subject to the appropriate level of DBS check’



Contractors

Suggested approach - divide into groups e.g.

- i. regular and long term e.g. catering and cleaning
- ii. less frequent but long term e.g. grounds work
- iii. regular but temporary e.g. building project
- iv. occasional work e.g. emergency contractor

Regular long term contractors

1. Identity
2. Right to work in the UK
3. Qualifications
4. Employment history
5. References
6. Medical fitness
7. Enhanced DBS disclosure
8. Children's Barred List
9. Overseas checks
10. Overseas teaching sanctions
11. Prohibition from teaching
12. Prohibition from management
13. Section 142 direction
14. Childcare disqualification

Less frequent long term contractors

Can use the KCSIE approach

1. Identity
 2. Enhanced DBS disclosure
 3. Children's Barred List
- Plus other checks which are relevant to the role e.g. prohibition from teaching; childcare disqualification and any others the school deems necessary based on assessment of safeguarding risk



Temporary or occasional contractors

Can use the KCSIE approach

1. Identity
 2. Enhanced DBS disclosure
 3. Children's Barred List
- Plus other checks which are relevant to the role e.g. prohibition from teaching; childcare disqualification and any others the school deems necessary based on assessment of safeguarding risk

OR

- Temporary or occasional paid work which is not a specified activity with children (i.e. teaching, supervising, caring for or providing advice) is not regulated activity and could use without checking provided practical safeguards are in place (school has discretion in this respect but must apply it reasonably)



Contractors (cont'd)

- Who is responsible for carrying out the checks on contractors?
- **KCSIE para 290**: where schools and colleges use contractors to provide services, they should set out their safeguarding requirements in the contract with the third party organisation
- Seeing the DBS certificate
- **How do you record the checks on the SCR?**

Visitors and visiting professionals

Visitors

- No checks required for visitors who undertake no activity for/at the School e.g. parents, prospective parents (**KCSIE para 300**)
 - **KCSIE para 301**: use professional judgment about the need to escort or supervise visitors - **do not include on the SCR**
 - **Visiting professionals** (e.g. educational psychologists, social workers)
 - **KCSIE para 302**: check ID, obtain assurance that visitor has had appropriate level of DBS check (or their employer has confirmed this)
 - **KCSIE para 302**: *'Schools and colleges should not ask to see the certificate in these circumstances'*
 - **Why not?**

Trainee/student teachers

- Salaried by school = school is responsible for the checks (**KCSIE para 296**)
 - All checks as for teaching staff
- Fee funded = ITT provider is responsible for the checks (**KCSIE para 297**)
 - Range of checks set out in '*ITT: criteria and supporting advice guidance*'
 - DBS (not required to provide certificate or any information from it) / Children's Barred List / Overseas / Medical fitness / Childcare disqualification / Prohibition from teaching / References / Qualifications
 - Must also ensure selection process follows Part 3 of KCSIE
 - Confirm in writing **what checks have been done** and that the ITT provider has **judged the individual to be suitable to work with children and to train to teach**
 - Schools must check ID on first day

Which checks must be included on your SCR?

1. Identity
2. Right to work in the UK
3. Children's Barred List
4. DBS
5. Qualifications
6. Prohibition from teaching
7. Section 142 direction
8. Prohibition from management
9. Overseas checks

What about: references, employment history, medical fitness, childcare disqualification, overseas teaching sanctions?



Keeping evidence of checks

- ISSRs require schools to keep a SCR
- ISSRs do not require schools to retain any other evidence that checks completed
- **KCSIE para 276** requires retention of evidence that following checks completed:
 - identity;
 - right to work in the UK;
 - qualifications
- Education and Skills Act 2008 section 110 – gives inspectors a right to inspect and take copies of any records kept by a school that are required for the purposes of inspection
- SCR is primary source of evidence that checks carried out

By when must checks be completed?

Staff

- Before “appointment” i.e. on or before first day of work
- DBS before or as soon as practicable after appointment

Supply staff

- All checks including DBS before work starts

Members of proprietor body

- Before appointment
- DBS and overseas checks before or as soon as practicable after appointment

Volunteers

- Before commencing any duties (unless supervised)

What does this mean for compliance?

Re-checking staff

- **KCSIE para 345:** *'There are limited circumstances where schools and colleges will need to carry out new checks on existing staff. These are when...there has been a break in service of 12 weeks or more.'*
- **Is this correct?**
- Checks in the ISSRs apply when a person is 'appointed'
- Check the contractual position and decide is it continuing or has it been terminated/come to an end
- No checks required unless being appointed/re-appointed
- Analogous to return from absence for maternity leave or long term ill health
- Risk assessment and some checks even if not required?
- Which checks?

Inspection of the SCR

ISI Commentary (March 2023) paragraph 604

- *“It is **possible in the case of older appointments that evidence will not be available to support the production of a fully complete SCR**”; so*
- *“inspectors will look to confirm that **several recent appointments have been correctly completed and recorded**”; and*
- *“that **reasonable efforts have been made to complete previously omitted checks that were legally required at the time of appointment**”*

What is required for a compliant SCR?

Two conditions must be met (ISI Commentary paragraph 605)

- *“the **school must have identified the issues** outside of the inspection process and **taken appropriate steps to fill gaps** so far as practicable”; and*
- *“there must be a **clear track record in relation to recent appointments of properly completed checks** demonstrating that the current recruitment process is effective and thorough”*

Proportionality in inspection judgments

ISI Inspection Framework – September 2023 - para 8

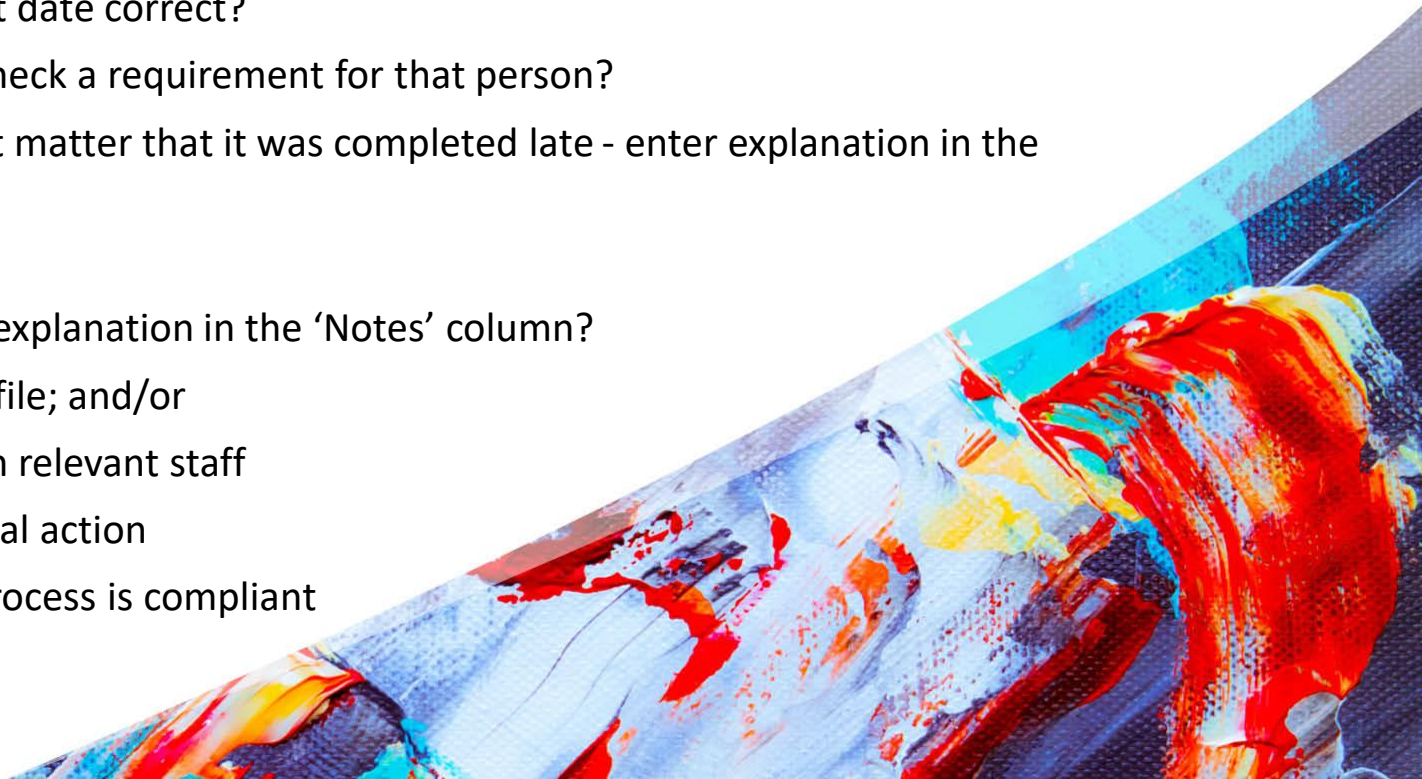
*‘When judging the extent to which a school meets the Standards, inspectors will exercise their professional judgement. Where there are some relative weaknesses or minor errors that can be easily rectified, inspectors will take a **proportionate approach**. Inspectors will consider if those weaknesses amount to a failure to meet one or more of the Standards. Weaknesses or errors which are indicative of systemic failings in the school’s processes and/or provision will lead to a judgement that the relevant Standards are unmet’*

Tips for a critical review of the SCR – gaps

1. Know what checks are required for each person, according to start date and role
2. Check the start date and role
3. Are there entries in each box / are there any blanks?
4. If there is a blank, was the check a requirement for that person?
5. If No: enter “N/A” in the box
6. If Yes:
 - I. review the file; and/or
 - II. discuss with relevant staff
7. Consider remedial action
8. Update the SCR

Tips for a critical review of the SCR – late checks

1. Were any checks completed after the start date?
2. If Yes: is the start date correct?
3. If Yes: was the check a requirement for that person?
4. If No: it does not matter that it was completed late - enter explanation in the 'Notes' column
5. If Yes:
 - I. is there an explanation in the 'Notes' column?
 - II. review the file; and/or
 - III. discuss with relevant staff
6. Consider remedial action
7. Check current process is compliant





Checks and the SCR in detail

Identity

Who: Staff, supply staff, members of proprietor body, contractors and volunteers

Since: 1 September 2003

Required for SCR: Yes

SCR entries: Date of check (required); initials of checker (optional); details of evidence checked (optional)

Evidence on file:

- A copy of the documents used to check identity (**required - KCSIE para 276**)
- What documentation? Follow DBS identity checking guidance
 - identity documents e.g. passport / residence permit / birth certificate / driving licence; and
 - financial & social history documents e.g. bank / mortgage / Council Tax statements
- Best practice is checking the name on the birth certificate, where this is available (**KCSIE para 232**)

Right to work in the UK

Who:

- **ISSRs** – staff, supply staff and members of proprietor body
- **Immigration Act:** all employees

Since: 1 May 2007

Required for SCR: Yes

SCR entries: Date of check (required); initials of checker (optional); details of evidence checked (optional)

Evidence on file: A copy of the documents used to establish RTW (**required - KCSIE para 276**)

Qualifications

Who: Staff, supply staff and regular contractors

Since: 1 September 2003

Which qualifications: “*appropriate*” qualifications

Required for SCR: Yes

SCR entries:

- Date of check (required); initials of checker (optional); details of evidence checked (optional); or
- N/A if no qualification required or relied upon

Evidence on file: a copy of the documents should be kept i.e. certificate, diploma or letter from the awarding body (**required - KCSIE para 276**)

- **Does the SCR entry match the file?**

DBS disclosures

Who: Staff, supply staff, members of proprietor body, contractors and volunteers

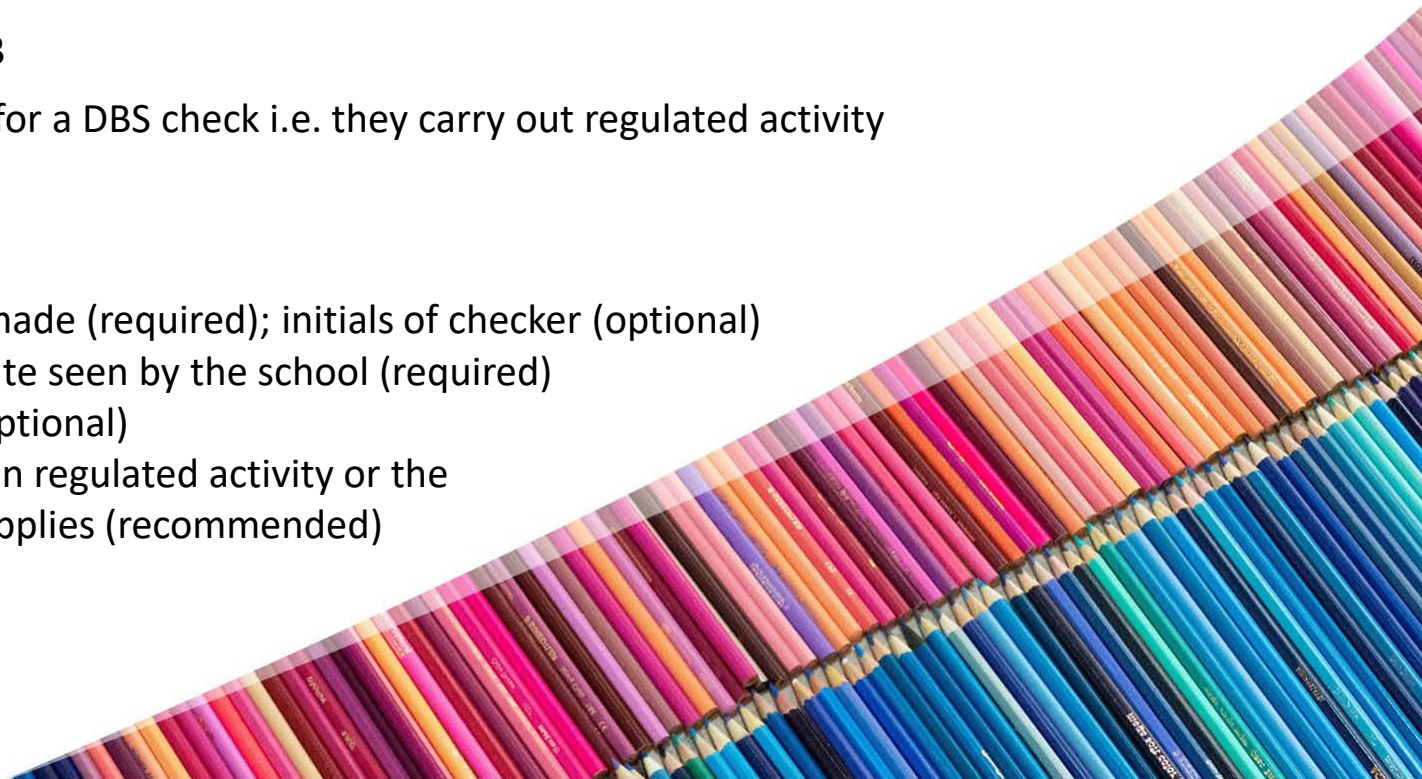
Since: 1 September 2003

If: The person is eligible for a DBS check i.e. they carry out regulated activity

Required for SCR: Yes

SCR entries:

- Date the check was made (required); initials of checker (optional)
- Date original certificate seen by the school (required)
- Certificate number(optional)
- N/A – if not working in regulated activity or the “three month rule” applies (recommended)





DBS disclosures (cont'd)

Key point: must see the DBS certificate and record this date on the SCR. Unchecked until it is seen. Clearance from umbrella body alone is not enough

Commencing work prior to receipt of the DBS disclosure certificate

- All other checks completed
- Risk assessments
- Supervision

Evidence on file:

- No requirement to retain any evidence
- Options:
 - DBS certificates?
 - Written risk assessment
 - Documents detailing supervision

Children's barred list checks

Who: Staff, supply staff, members of proprietor body, contractors, and volunteers – if working in regulated activity

Since: 2 October 2000 with retrospective effect (Protection of Children Act)

Required for SCR: Yes

SCR entries:

- Date of check (required); initials of checker (optional);
- N/A if not in regulated activity (recommended) / note explaining why (optional)

Evidence on file:

- No requirement to keep any evidence
- **Options:** entry on recruitment checklist / copy of print out from Teacher Services System (**TSS**) / file note

Overseas checks

Who:

- Staff, supply staff, members of proprietor body and regular contractors

Since: 17 January 2005

If:

- that person is living or has lived outside the United Kingdom; and
- as a consequence, obtaining a DBS certificate is insufficient to establish their suitability to work in a school

Options

- 3 months or more in past 5 years;
- 3 months or more in past 10 years;
- every country in which lived or worked; or
- assess each case individually



Overseas checks (cont'd)

Which checks:

- I. such **further checks** are made **as the proprietor/governing body considers appropriate**;
- II. having **regard to any guidance** issued by the Secretary of State
 - **KCSIE para 280**: *'schools must make any further checks they think appropriate so that any relevant events that occurred outside the UK can be considered'*
 - **'Guidance on the application process for criminal records checks overseas'**

Overseas checks (cont'd)

What information should you obtain?

- Official government evidence must always be sought i.e. criminal records checks/police checks/certificate of good conduct from country(ies) in question
- **KCSIE para 282: where this information is not available** schools should **seek alternative methods of checking suitability** and/or **undertake a risk assessment** that supports informed decision making on whether to proceed with the appointment
- Before employment commences you must therefore have:
 - overseas criminal record/police check/certificate of good conduct; and/or
 - another form of information about the person from that country; or
 - if above **not available** a risk assessment about whether to proceed
- It is therefore possible to appoint if no information is available but you must document your rationale

Overseas checks (cont'd)

Required for SCR: Yes

SCR entries:

- Date of check (required); initials of checker (optional)
- N/A if you decide they are not necessary or if 'three month rule' applies (recommended)

Evidence on file:

- No requirement to keep any evidence
- **Options:**
 - copy of overseas check
 - reference(s) from overseas employment
 - explanatory note - if lived overseas but checks deemed unnecessary (optional)

Overseas teaching sanctions

- Formerly EEA teaching sanction check – via TSS - not possible with effect from 1 January 2021
- 18 January 2021: letter of professional standing
- **Now:** see **KCSIE para 280:** schools **could** obtain a letter (via the applicant) from the professional regulating authority in the country (or countries) in which the applicant has worked confirming that they have not imposed any sanctions or restrictions, and or that they are aware of any reason why they may be unsuitable to teach
- **Who:** teaching staff appointments who have worked as a teacher overseas, at any time, in any country
- **Do you have to comply?**
- **Since:** 18 January 2021

Overseas teaching sanctions (cont'd)

- Require applicant to get this for you and tell them to keep evidence of their attempts to obtain it.
- Can be difficult to obtain.
- Can still appoint without it by undertaking a risk assessment that supports information decision making about whether to proceed – **KCSIE para 282**
- Must make the attempt to obtain the information first. The evidence of the attempts to obtain it will be relevant to your risk assessment
- Why are you checking this?

Overseas teaching sanctions (cont'd)

Required for SCR: No (but recommended)

SCR entries:

- Date of check (recommended); initials of checker (optional)
- N/A for non-teaching appointments or if not worked as a teacher overseas
- Use the EEA teaching sanction or overseas column

Evidence on file:

- No requirement to retain any evidence
- **Options:**
 - letter from the regulator of the teaching profession;
 - evidence to show that attempts were made to obtain it; or
 - risk assessment about whether to appoint



References

Who: KCSIE: staff, supply staff and regular long term contractors

Since: 1 September 2003

Required for SCR: No (but recommended)

SCR entries:

- Date each reference deemed satisfactory (recommended); initials of the checker (optional)

Evidence on file:

- No requirement to retain any evidence
- **Options:**
 - copy of each reference;
 - file notes to evidence attempts to chase references
- **KCSIE para 223:** *'ensure any references are from the candidate's current employer'*

Employment history

Who: KCSIE: staff, supply staff and regular contractors

Since: 1 September 2003

What do you need? Full employment history, (since leaving school, including education, employment and voluntary work) including reasons for any gaps in employment (**para 214 KCSIE**)

Required for SCR: No (but recommended)

SCR entries:

- Date of check (recommended); initials of the checker (optional)

Evidence on file:

- No requirement to retain any evidence
- **Options:**
 - application form with a full employment history;
 - written record explaining any gaps in employment history





Medical fitness

Who: Staff, supply staff and regular contractors

Since: 1 September 2003

How to check: no prescribed method

Required for SCR: No (but recommended)

SCR entries:

- Date of check (recommended); initials of checker (optional)

Evidence on file:

- No requirement to retain any evidence
- Options:
 - self-declaration of medical fitness
 - health questionnaire; or
 - other evidence confirming physically and mentally fit for the role

Prohibition from teaching

Who: Those who carry out “teaching work”

Since: 1 April 2012 – all schools

Purpose of the check

Each of the following activities is individually teaching work:

- planning and preparing lessons and courses for pupils;
 - delivering lessons to pupils;
 - assessing the development, progress and attainment of pupils; and
 - reporting on the development, progress and attainment of pupils.
- Not teaching work if it is supervised by a qualified teacher or other person nominated by the Head
 - Consider this broadly – look at job descriptions not job titles
 - Be aware of changes to roles during employment
 - If do not check because of direction or supervision advise a note is kept documenting reasoning



Prohibition from teaching (cont'd)

Required for SCR: Yes

SCR entries:

- Date of check (required); initials of checker (optional)
- N/A if not carrying out “teaching work” or appointed before 1 April 2012 (recommended)

Evidence on file:

- No requirement to retain any evidence
- **Options:**
 - print out of information from TSS (for those with a TRN); or
 - note confirming the check completed (for those without a TRN)

Prohibition from management (section 128 directions)

Who:

- Those involved in the management of the School
- See **KCSIE para 257**: Head / Principal, Deputy/Assistant Head, Governors
- Beyond that it is a decision for each school to take based on what the role involves
- Appointed from 12 August 2015 onwards. Internal promotions from May 2018

How: TSS or DBS certificate

Required for SCR: Yes

SCR entries:

- Date of check (required); initials of checker (optional);
- N/A for all other appointments (recommended)

Evidence on file:

- No requirement to retain any evidence
- **Options:** file note confirming not on prohibited list

Section 142 directions

What:

- Section 142 Education Act 2002: gave secretary of state power to issue prohibitions or restrictions which prevent or restrict a person from:
 - I. providing education at a school;
 - II. taking part in the management of an independent school; or
 - III. working in regular contact with children

Who: anyone undertaking the above work

Since:

- 1 September 2003
- No longer issued but must still check

Section 142 directions (cont'd)

How to check:

- DBS certificate; or
- TSS

Required for SCR: Yes (since 5 January 2015)

How to record on the SCR: use the DBS column

What evidence should be on file:

- No requirement to retain any evidence
- **Options:**
 - Note confirming that no information contained on DBS disclosure
 - Print out of information from TSS or note to confirm when checked



Childcare disqualification

See: 'Disqualification Under the Childcare Act 2006'

Who: Those who provide “childcare” in Early Years Provision or Later Years Provision or are directly involved in its management

Since: 26 March 2015

- **EYP** = providing education in nursery and reception classes and/or any supervised activity e.g. breakfast clubs, lunchtime supervision and after school care during and outside of school hours
- **LYP** = childcare provided by the school outside of school hours for children who are above reception age but who have not attained the age of eight (not including extended school hours for co-curricular learning activities, such as a school's choir or sports teams)

Childcare disqualification (cont'd)

Who to check: further information

1. Those in **scope = must be checked** i.e. teachers and teaching assistants in EYP / those running before and after school clubs in EYP and LYP / Head
2. Those **out of scope = no check required** i.e. caretakers, cleaners, drivers, transport escorts, medical staff, office staff
3. Those **occasionally in scope = risk assess** whether to check by reference to duties and frequency i.e. other teachers & teaching assistants, contractors, supply staff, volunteers, governors, members of the SLT

Childcare disqualification (cont'd)

How to check:

- Successful candidates for relevant roles to self-declare any disqualification grounds during recruitment
- Existing staff in scope to self-declare any relevant grounds
- 'By association' element ceased to apply to schools with effect from 31 August 2018
 - records for household members should be destroyed
- Disqualified person can apply for a waiver from Ofsted
- On-going duty on staff to update about change in circumstances – make this contractual

Childcare disqualification (cont'd)

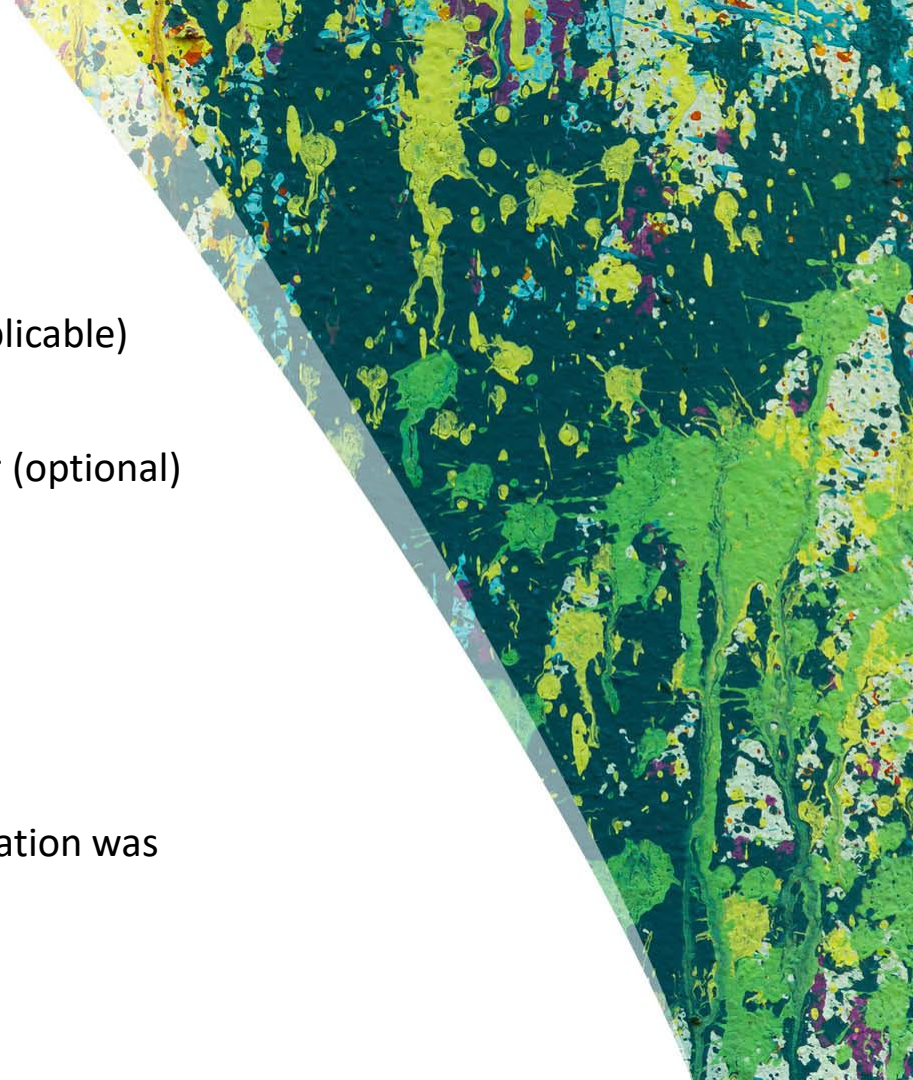
Required for SCR: No (but recommended where applicable)

SCR entries

- Date of check (recommended); initials of checker (optional)
- N/A if not “in scope”

Evidence on file:

- No requirement to retain any evidence
- Options:
 - self-declaration form
 - waiver from Ofsted confirming a disqualification was waived (if necessary)



Key principles

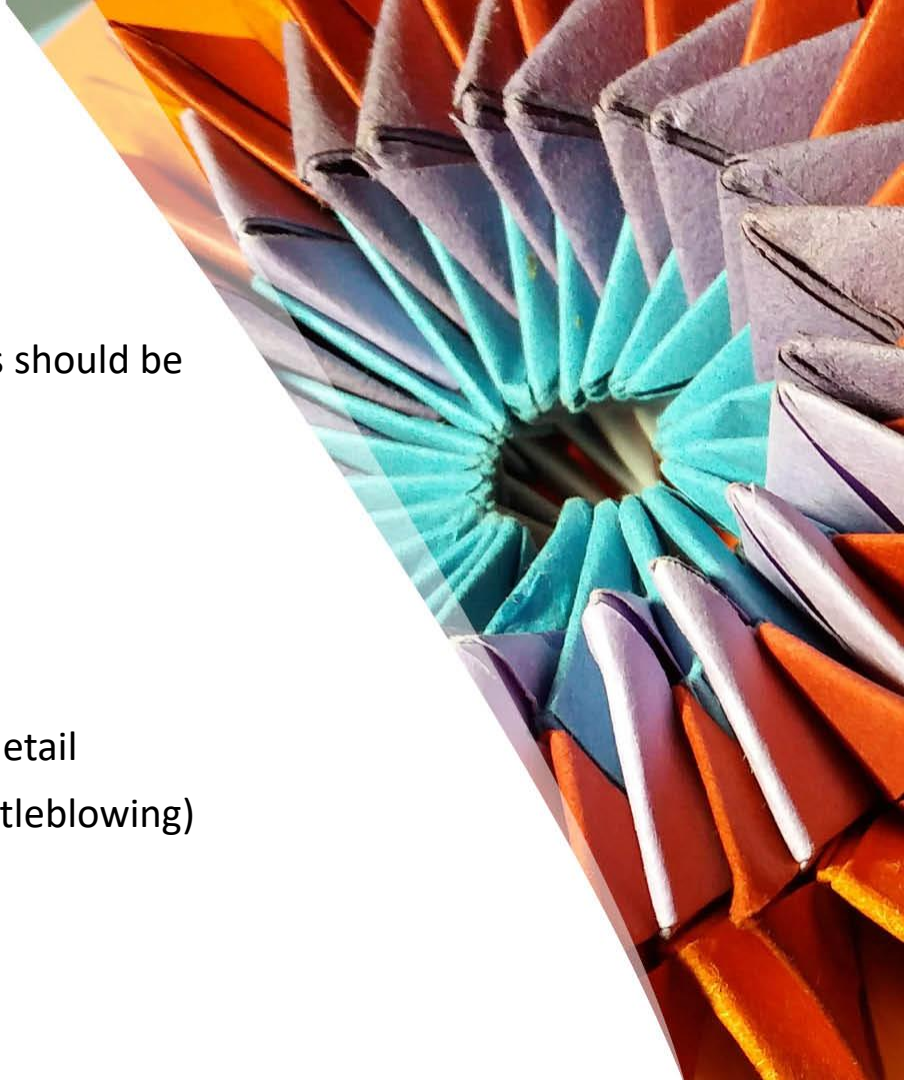
1. Review the SCR frequently – audit trail
2. Governor oversight on a termly basis – audit trail
3. Identify issues outside of the inspection process and take **appropriate steps** to fill gaps or explain checks completed late
4. Establish how long your clear track record of properly completed appointments is
5. Review whether you are following your own recruitment procedures
6. Take advice
7. External audit of SCR and files



After the appointment and dealing with a safeguarding allegation

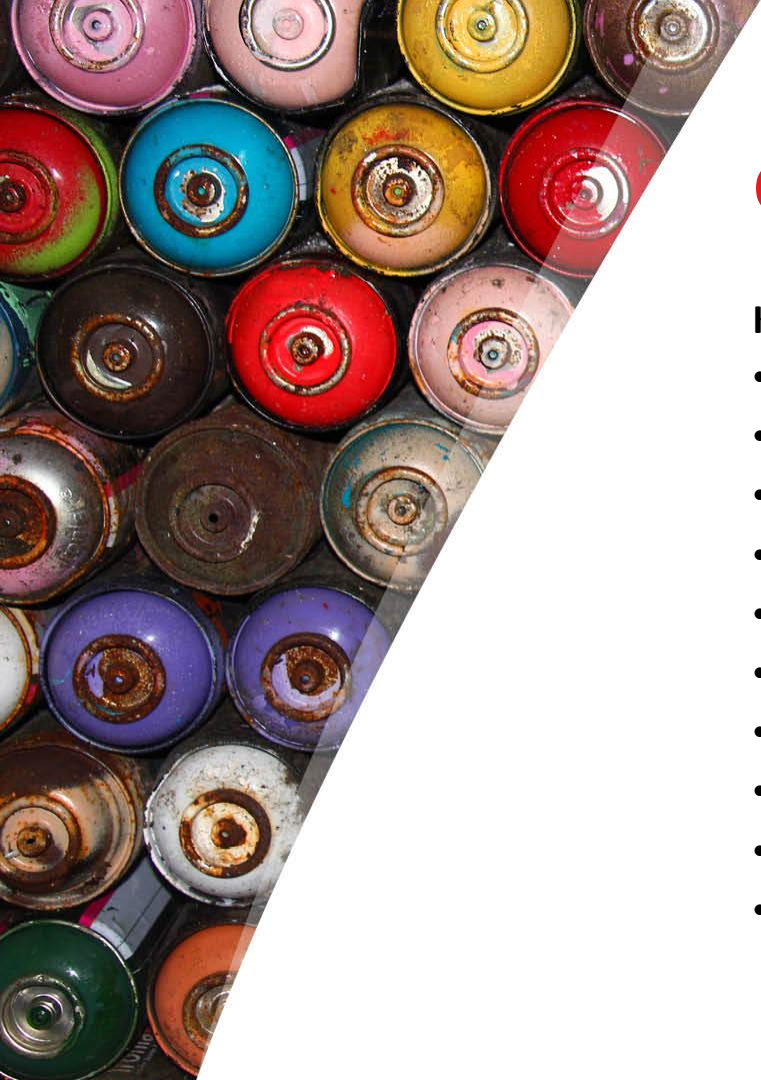
Safeguarding induction

- Introduction to your culture and ethos
- **KCSIE para 13:** all staff, governors and volunteers should be made aware of:
 - KCSIE Part 1
 - the child protection policy
 - staff code of conduct
 - pupil behaviour policy
 - DSL and DDSL – role, identity and contact detail
 - employment policies and procedures (whistleblowing)
- Recommend use of an induction checklist



Code of conduct

- All schools required to have a Staff Code of Conduct
- Serious Case Review: studies have found reduced likelihood of abuse where organisational messages and rules are clear and consistent
- Cover what is expected and what is not permitted in terms of behaviour



Code of conduct (cont'd)

Key elements:

- a set of general guiding principles
- guidance on staff / pupil relationships
- meetings with pupils
- language and appearance
- guidance on restraint and physical contact
- conduct outside of school
- communication with pupils- use of social media
- acceptable use of technologies
- FGM
- the prevent duty

The benefits of a code of conduct

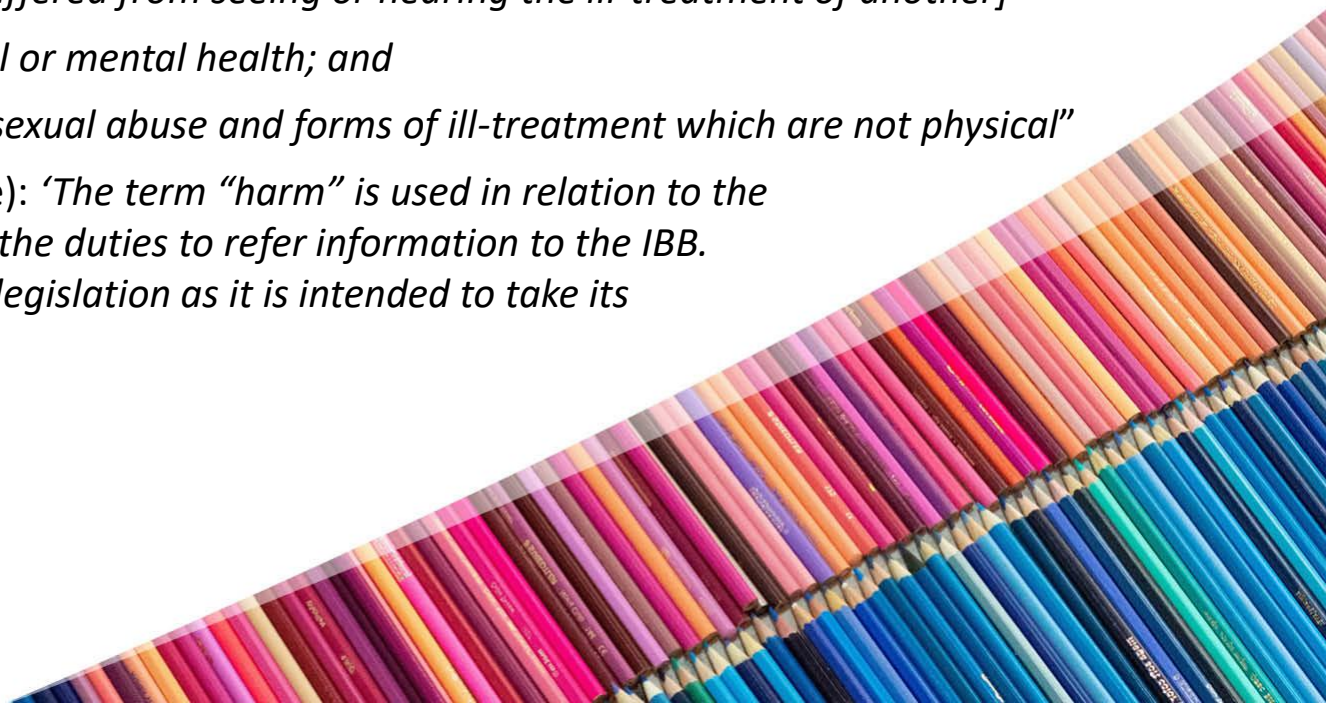
- Sets clear expectations on behaviour
- Allows colleagues to better identify concerning behaviours and to report them
- Marcus Erooga IICSA report:
 - a key element of any abuse process will be boundary violation
 - the safest environments for children are organisations where boundaries are considered important and adhered to in every aspect of staff performance
- Helpful in disciplinary procedures

Identifying harm

Children Act 1989: section 31(9) – Care and supervision orders:

- *“**harm**” means ill-treatment or the impairment of health or development [including, for example, impairment suffered from seeing or hearing the ill-treatment of another]*
- *“health” means physical or mental health; and*
- *ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical”*

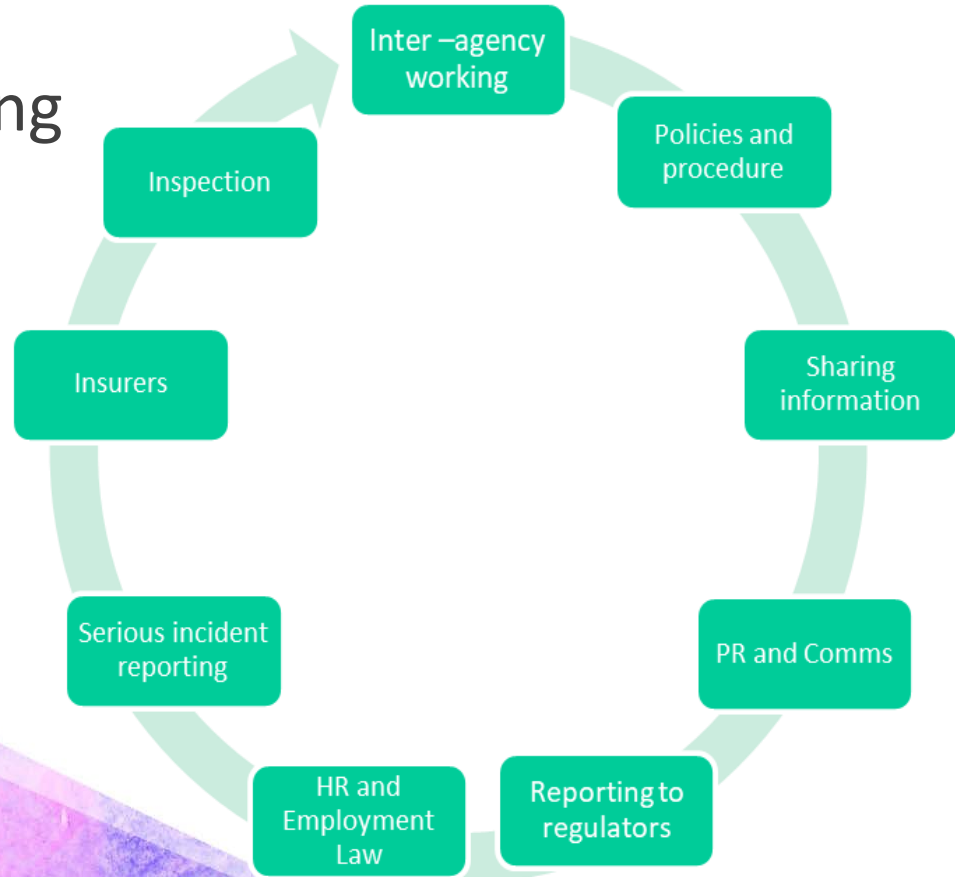
SVGA 2006 (Explanatory Note): *‘The term “harm” is used in relation to the thresholds for barring and for the duties to refer information to the IBB. The term is not defined in the legislation as it is intended to take its normal, everyday meaning’*



KCSIE Part 1: concerns about colleagues which meet the harm threshold

- **KCSIE para 72:** *“If staff have a safeguarding concern or an allegation of harming or posing a risk of harm to children is made about another member of staff (including supply staff, volunteers, and contractors) then this should be referred to the Head or Principal”*
- Concerns about the Head or Principal refer to the Chair of Governors, chair of the management committee or proprietor
- Where there is a conflict of interest in reporting to the Head this should be reported to the LADO
- Follow the procedure in Part 4 of KCSIE

Facets of a safeguarding allegation





Case study – Part 1

A teacher, Mr B, is seen frequently walking around the school grounds with the same Year 13 pupil. The contact appears to be social rather than professional in contravention of the staff code of conduct.

Other staff are concerned about the frequency and nature of the contact.



Dealing with a safeguarding allegation

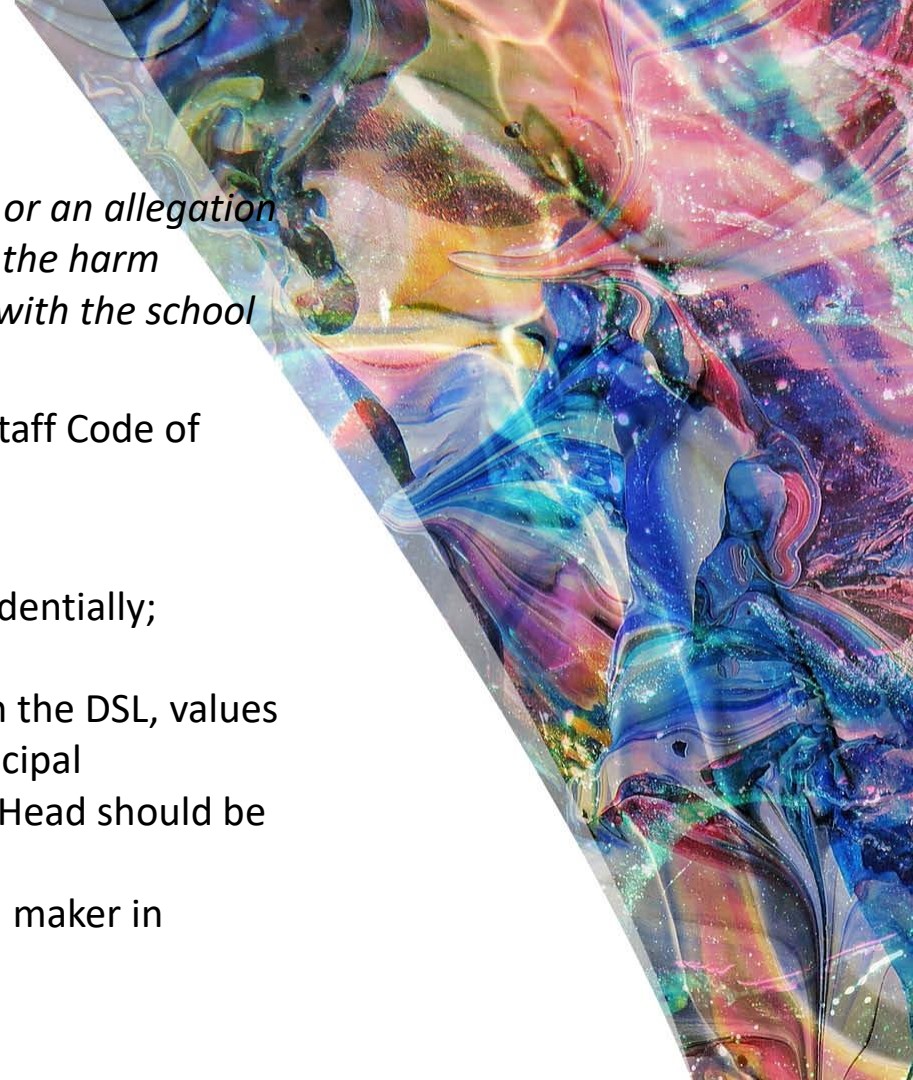
Does Part 4 of KCSIE apply?

The Part 4 threshold - must be followed if alleged that a member of staff has:

- behaved in a way which has harmed, or may have harmed a child;
- possibly committed a criminal offence against or related to a child;
- behaved towards a child or children in a way that indicates they would pose a risk of harm; or
- behaved or may have behaved in a way that indicates they may not be suitable to work with children

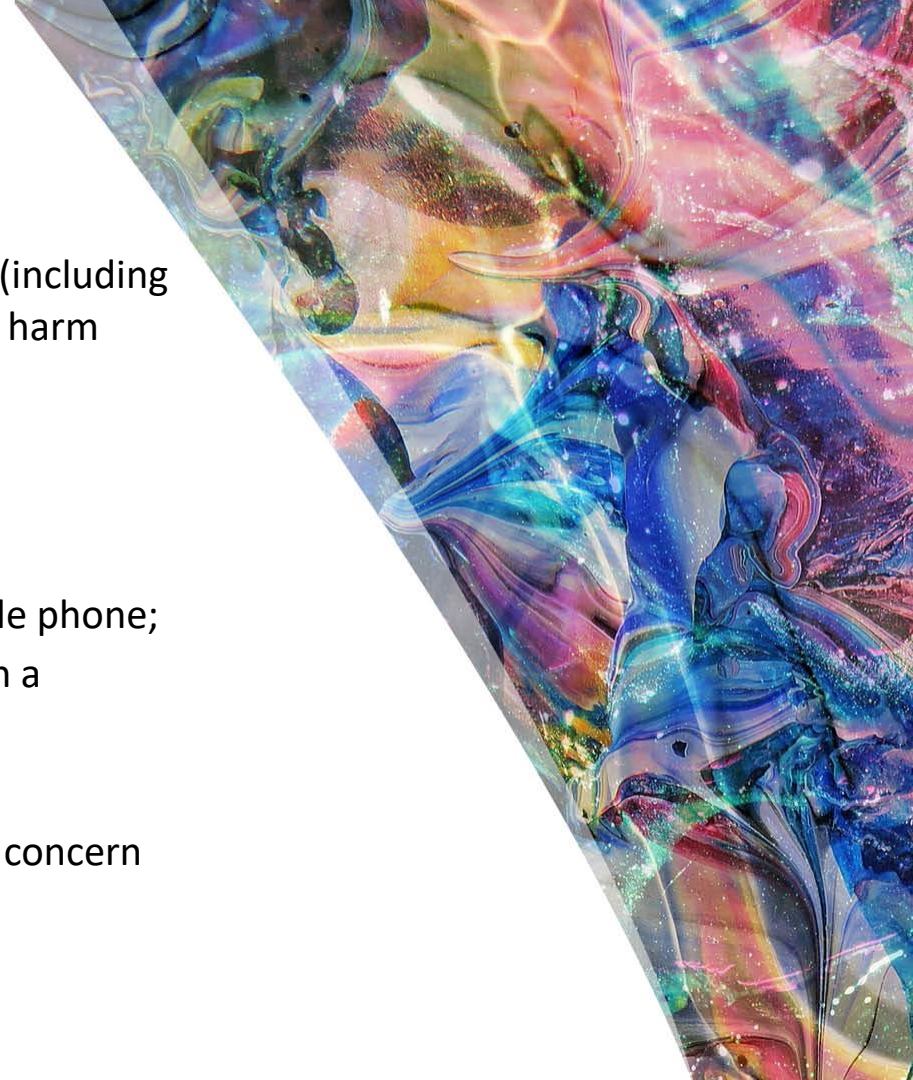
Low level concerns

- **KCSIE para 73:** *“If staff have a safeguarding concern or an allegation about another member of staff...that does not meet the harm threshold, then this should be shared in accordance with the school or college low-level concerns policy”*
- **KCSIE para 431:** LLC policy should be set out in the Staff Code of Conduct and Safeguarding Policy
- **KCSIE para 434:** a LLC policy should:
 - contain a procedure for sharing concerns confidentially;
 - be clear, easy to understand and implement;
 - provide for concerns to be shared initially with the DSL, values guardian, safeguarding champion or Head/Principal
 - if shared initially with DSL or other person the Head should be informed *‘in a timely fashion’*
 - Head/Principal should be the ultimate decision maker in respect of all low-level concerns



Low level concerns (cont'd)

- What is a low level concern? **KCSIE para 427**
 - behaviour inconsistent with code of conduct (including outside of work) but not enough to meet the harm threshold
- Some examples (**KCSIE para 427**):
 - being over friendly with children;
 - having favourites;
 - taking photographs of children on their mobile phone;
 - engaging with a child on a one-to-one basis in a secluded area or behind a closed door; or
 - humiliating children
- Key – encouraging staff to recognise and share any concern



Case study – Part 2

Mr B is spoken with and is shocked by the complaint. He says that the pupil needed additional pastoral support due to personal circumstances, that she had latched on to him and that he was only trying to be supportive.

When the pupil is spoken with she portrays this as a friendship and does not consider it inappropriate.

This concerns the Head who decides that the School email system should be searched. This reveals several emails between Mr B and the pupil, which are overly familiar in nature. Some of the emails have been sent to the pupil during school holiday periods.



Contacting the LADO

- Head (or Chair of Governors if Head involved) contacts LADO to:
 - discuss the allegation;
 - take advice about whether the threshold in Part 4 is met;
 - agree a course of action
- LADO will guide as to what information they require including details of allegation, previous history, any similar prior allegations, staff member's current contact with children

Potential outcomes of the LADO discussion

- No further action – justification to be recorded by Head & LADO
- Strategy meeting with LADO, school, children's social care services & police if child suffering, or likely to suffer, significant harm
- If no police or social care investigation school directed to follow its internal procedures

Case study – Part 3

The Head then receives a call from the parents of the pupil to say they have been looking at their daughter's mobile phone and have found text messages between her and Mr B. The text messages suggest that there has been a meeting between them on a Saturday evening and the parents say they are going to go to the police if the School does not act immediately.



Information sharing

At this early stage what information can be shared with:

- the staff who raised the concern?
- the subject of the concern?
- the pupil?
- the pupil's parents?

Information sharing (cont'd)

Overriding considerations:

- pupil welfare
- confidentiality
- data protection
- integrity of the investigation
- staff welfare



Early strategic considerations

1. Who will liaise with the statutory authorities?
2. Who will liaise with parents if needed?
3. Who will provide support for the child?
4. Who will liaise with the staff member?
5. Can the staff member remain at work?
6. Who will carry out a disciplinary investigation?
7. Who will conduct a disciplinary hearing?
8. Who will conduct an appeal hearing?

Steps in the investigation process

- Assign a senior member of staff to investigation
- What process should be followed
- Consider the order of the investigation:
 - speaking to staff
 - checking use of school email system
 - speaking to the pupil or the teacher first?
 - do other staff need to be spoken with?
- How many staff will be involved?



Case study – Part 4

The LADO, the Police and the Head have now attended a strategy meeting. The LADO and the Police consider that a potential criminal offence has been committed and that a criminal investigation is required. Mr B is arrested, questioned and released.

A decision is taken to formally suspend Mr B.



Suspension

- Must not be an automatic response
- Is there a justification for suspension?
- Consider alternatives
- What will the terms of suspension be:
 - contact with staff, pupils or parents?
 - access to school site?
 - access to email account and intranet?
 - availability for work if required?
 - pay and benefits?
 - support and point of contact





Support for the staff member

- School has a duty of care to all employees
- Take all steps to minimise the inherent stress in this process:
 - when do you inform the individual?
 - encourage contact with trade union for support
 - point of contact with the school
 - access to counselling and medical support
 - social contact with colleagues
 - keep the individual informed of progress

Protecting anonymity of teachers

- **Section 141F Education Act 2002** – 1 October 2012
- Prohibition on publishing details of allegations of a “relevant” criminal offence made against a teacher by a current pupil if likely to lead to teacher being identified
- Breach = criminal offence, fine of up to £5,000
- Restriction ceases when individual formally charged with the offence, if in the interests of justice to lift or individual consents

The disciplinary case

- Is there a disciplinary case to answer?
- Is this a safeguarding matter or one of professional boundaries?
- What policies and procedures are relevant?
- What would the allegations include?
- What are the potential sanctions?
- What proof is required?

Case study – Part 5

Following a disciplinary hearing and appeal the allegations against Mr B are upheld and he is dismissed for gross misconduct.



Recording the outcome

- How should the outcome be recorded? (**KCSIE para 400**)
 - substantiated (sufficient evidence to prove);
 - false (sufficient evidence to disprove);
 - malicious (clear evidence to show deliberate act to deceive or cause harm to the accused);
 - unsubstantiated (insufficient evidence to prove or disprove); or
 - unfounded (where there is no evidence or proper basis to support the allegations)
- Detailed written disciplinary decision is important
- The LADO must be informed of the outcome
- LADO may have already arrived at their own decision

References and record keeping

- **References:**
 - **KCSIE para 420:** only substantiated allegations should be mentioned
 - low level concerns - **KCSIE para 442:** a low-level concern which relates exclusively to safeguarding should not be referred to in a reference. A low-level concern (or group of concerns) which has met the threshold for referral to the LADO and is substantiated, should be referred to in a reference
- **Record keeping:** malicious allegations must not go on file
- **False and unsubstantiated allegations:** file note of procedure and outcome
- **Purpose:** to enable accurate information to be provided in references, clarifying information in future DBS checks & to avoid re-investigation



References and record keeping (cont'd)

- Period of retention:
 - IICSA
 - all other records until normal pension age or for 10 years from date of allegation if longer
 - insurers may specify a longer period

Referrals to the DBS

- **Section 35 SVGA:** schools required to make a referral to the DBS if an individual is **removed** (or removes themselves) from regulated activity **because** they have either:
 - engaged in “relevant conduct”;
 - satisfied the “harm test”; or
 - been charged or convicted of a “relevant offence”
- **Timing:** as soon as possible / “promptly” after removal
- **Does suspension trigger a referral? KCSIE para 350:**
“this could include when an individual is suspended”

Referrals to the Teaching Regulation Agency

- **S. 141D Education Act 2002** - duty on schools to consider a referral to the TRA where ceased to use services of a teacher due to:
 - unacceptable professional conduct;
 - conduct that may bring the profession into disrepute;
 - conviction of a “relevant offence”
- Any safeguarding matter or serious code of conduct breach that results in dismissal (or resignation) should be referred

Reporting to the Charity Commission

- Timing
- Significant loss of funds; or
- Significant risk to:
 - property;
 - work;
 - beneficiaries; or
 - reputation
- Whose decision?
- Inspection?





Get in touch



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