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Effective investigations

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Agenda

- Part 1 – Key principles
- Part 2 – Employment investigations
- Part 3 – Parent/Pupil/Other Investigations

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Part 1 – Key principles

- What do we mean by ‘investigation’?
- When and why investigations are needed
- Preliminary issues – preservation of evidence, interplay with external agencies, suspension
- Identifying the relevant framework/process
- Commissioning an investigation – who should commission it on behalf of the school? Who should undertake it?
- Managing conflict and ensuring fairness
- The need for clear terms of reference
- Data protection and disclosure considerations



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What do we mean by investigation?

No universal definition but essentially some form of fact-finding exercise.

In an employment context defined as:

“...a fact finding exercise to collect all the relevant information on a matter ... A properly conducted investigation can enable an employer to fully consider the matter and then make an informed decision on it.”

(p.4 of the ACAS Guide on conducting workplace investigations)



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Why investigate?

- To identify what has happened and take appropriate action
- To support those involved
- To comply with an express statutory, regulatory and/or contractual duty
- To follow school policy
- To discharge the school's duty of care
- To treat stakeholders fairly and reasonably
- To maintain trust and confidence in the school and the sector.



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ISSR

- Don't expressly refer to investigations
- But **do** require compliance with the Standards and leaders and managers to demonstrate '*good skills and knowledge*' and '*fulfil their responsibilities effectively*' to ensure the ISSR are '*met consistently*'
- Difficult to see how this can be done without appropriate investigation.



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Charitable duties

Trustees must:

- Carry out purposes for the public benefit
- Comply with governing document and the law
- Act in the school's best interests
- Manage resources responsibly & manage risks
- Act with reasonable care and skill, taking advice where necessary
- Ensure they are accountable, open and transparent and act with integrity.



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Risk management

Failure to do so poses risk of:

- Grievances, complaints and claims
- Regulatory action
- Adverse PR
- Increased damages/compensation awards.



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Types of investigation – Employment

- Grievances
- Capability/Conduct
- Whistleblowing
- Broader assurance i.e. equality



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Parent and pupil investigations

- Pupil disciplinary matters (e.g. bullying/drugs)
- Safeguarding concerns
- Parental complaints
- Pupil complaints
- Is a parent treating the school or members of its staff unreasonably?



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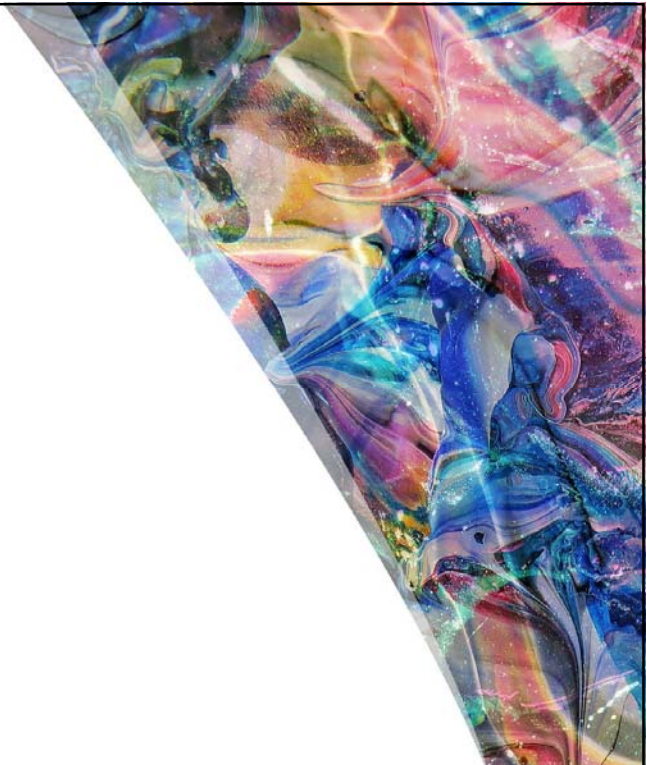


Other school investigations

- Health and safety incidents/near misses
- Data breaches/information security concerns
- Allegations of misfeasance/mismanagement by governors such as how historic issues were handled
- Strategic responses to current issues, such as BLM, Everyone's Invited.




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Preliminary issues

- Manage risk and support those involved
- Ensure preservation of evidence, such as:
 - Evidence of injury
 - Images/CCTV
 - IT
- Fulfil reporting obligations – internal & external
- Consider suspension in an employment situation
- Record decision-making.



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Interplay with external agencies

Does it involve a safeguarding concern?

- LADO or CSC advice/consent required to investigate?
- Low Level Concerns
- Other KCSIE requirements to follow?

Does it involve a criminal offence?

- Reported to police?
- Police consent to investigate (n.b. obstruction offences)?
- Problems with witnesses/jeopardising criminal process
- Delay and imperfect information-sharing
- Bail conditions and suspension.

Are other regulators investigating?



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Identifying the relevant framework

- Identify which legal frameworks, policies and procedures respond to the matter under consideration (and any inconsistencies in their requirements)
- What are the organisational roles and responsibilities?
- What time limits are there?
- Formal vs informal - is formal investigation warranted or required? What are the factors to consider?



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'Commissioning' the investigation

- Who should decide on what should be done?
- Is the procedure set by policies and procedures?
- What is reasonable and proportionate?
- Ensure fairness/absence of conflict of interest
- Treat seriously
- Avoid perception of cover up.



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What is fair?

- Ensure impartiality/absence of bias/power to act
- Follow due process and ensure people affected know the process in advance
- Compliance with the law and avoidance of discrimination
- Good administration – speed and efficiency
- Proportionality - with reference to the seriousness of the issues under consideration and possible outcome
- Undertake appropriate enquiry into matters in dispute
- If someone is the subject of a decision, they should have the material facts and an opportunity to make representations about them
- Decisions should be reasonable, reasoned & based on evidence
- Keeping accurate records and sharing outcome.



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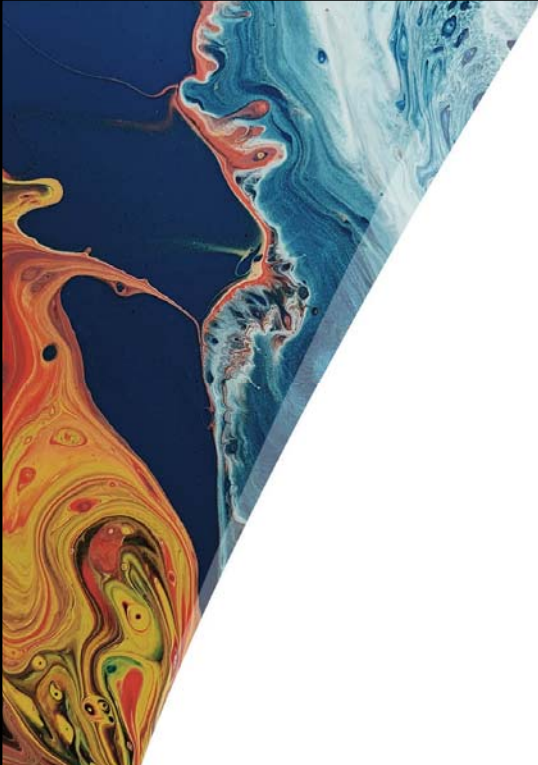
Appointing the investigator

- The right skills, experience and perspective
- Unconflicted
- Internal/external? Independent?
- Clarify their role - is separation of roles between investigator and decision-maker necessary/ appropriate?

For employment: *“Where practicable, different people should carry out the investigation and disciplinary hearing”* – para 6 of the ACAS Code




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Scope and terms of reference

- What are the aims of the investigation?
- Define scope and manage 'scope creep'
- Fact-finding, decision-making and/or making recommendations
- Who should determine methodology?
- Document terms of reference and terms of appointment if external appointment made.



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Communications, confidentiality and disclosure

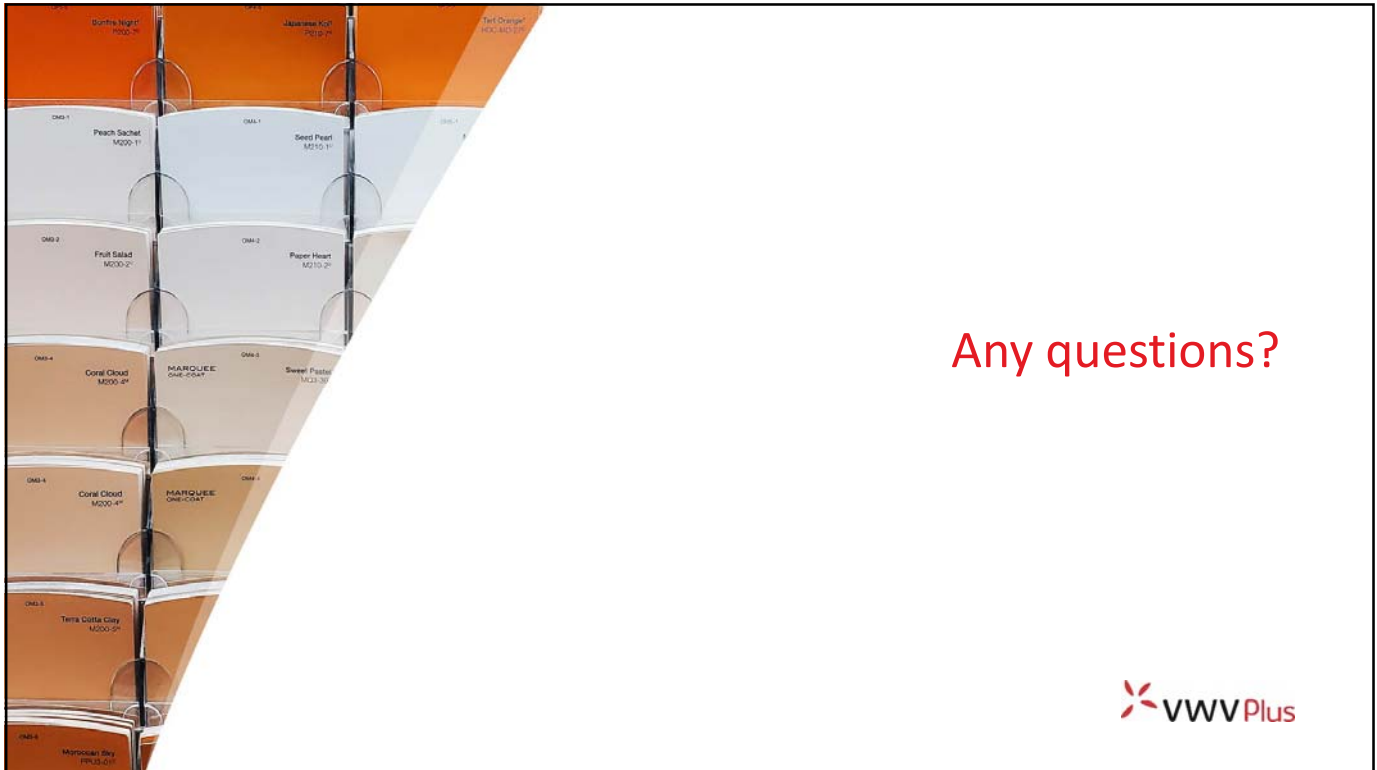
Will the fact of the investigation and/or its outcome be disclosable? If so, who to? (complainant? any alleged wrongdoer? witnesses? more broadly?)

Factors to consider:

- Fairness of process
- Necessity (e.g. internal reporting/regulatory requirements/court order/insurers)
- Welfare interests in protecting/sharing information
- Public interest in so doing
- Nature of request and by whom
- Privacy/data protection implications esp. if includes special category data
- Is the information protected by legal privilege?



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Any questions?



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Part 2 – Employment investigations

- Employment law framework
- Suspension
- Effective investigations:
 - Planning investigations
 - Interviewing
 - Gathering evidence
 - Writing the report
 - Tricky issues



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Employment law framework

- **British Homes Stores v Burchell** test of fairness:
 - Employer believed employee to be guilty of misconduct
 - Employer had reasonable grounds for believing
 - Employer carried out as much investigation as was reasonable
- ACAS Code, ACAS Guide and ACAS guide on conducting workplace investigations
- Stages of a fair process: investigation, hearing, outcome, appeal



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Suspension

- Reasonable to suspend?
- Conduct of investigation, impact on witnesses, gravity of allegations
- Consideration of alternative options
- A neutral act?
- Pastoral Care
- Keep length of time to a minimum
- LADO/CSC's view
- KCSIE & ACAS Guidance



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Case study

You are told by a member of staff that their Head of Department has been speaking rudely to a junior member staff that they manage, and that they think it might be bullying.

- *Should the Head of Department be suspended?*

You then receive a further complaint that the Head of Department has angrily confronted the junior member of the team.

- *Should they now be suspended?*
- *Should the process to be followed be informal or formal?*



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Practical Issues – Narrow Quay HR

- Process to follow
- Skills needed
- Tricky areas



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Early stages



- Appointing the right investigation officer – skills/impartiality/**time**
- Scope of investigation
- Plan for investigation
- Support for witnesses?
- Pause!



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Case Study – Part 1



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Extent of investigation

- Amount of investigation required: what is “reasonable in all the circumstances”?
- Sufficient to ensure substance of allegations is clear, can be put to the employee and can be responded to meaningfully



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Case Study – Parts 2 & 3



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Investigation meetings

- Make an agenda for use at the meeting
- Clarify issues around confidentiality
- Plan what key areas need to be addressed
- Arrange for a note taker to be present
- Meeting confined to establishing facts



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Investigation meeting

- **Questioning techniques:**
- When, Who, What.
- Why = Because
- “Help me understand”
- “One word against another”
- Detail
- Be aware of their cognitive load – change in their approach.



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Investigation meeting

- Triangulation of evidence
- Their own evidence
- Evidence of others
- Credibility generally
- Further questions following the interview



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Case Study – Parts 4 & 5



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Investigation meetings

- Reluctant witnesses or refusals to meet?
- Confidentiality/anonymity
- Signing off minutes
- Right to be accompanied?
- Recording of meetings



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Case Study – Part 6



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Information gathering

- Written statements from key witnesses
- Consider relevant written statements and documents
- Gather any other relevant and appropriate evidence
 - CCTV
 - Internet access? Screen shots?



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Changes to scope?

- New matters arising - refer back to those who commissioned you
- Be alert to potential new issues
- Counter grievances?



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The investigation report

- Confirm allegations investigated
- Summarise investigation undertaken
- Summarise evidence gathered
- Reach conclusion on whether there is a case to answer in respect of each allegation
- Other recommendations
- Append relevant evidence
- NEVER consider appropriate action or sanctions




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Report and recommendations

- Consider and reflect **all** the evidence
- Your role is to carry out an even handed investigation – not just finding evidence to support a particular case.
- Consider which allegations, if any, should be dealt with as a disciplinary matter.
- Is there sufficient evidence for each one of them?




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What next?

- Submit the investigation report
- Retain the investigation report
- Role of investigating officer at disciplinary hearing



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Case Study – Part 7



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Any questions?



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Part 3 – Pupil/parent investigations

- Pupil disciplinary matters (e.g. bullying/drugs)
- Safeguarding concerns
- Parental complaints
- Pupil complaints
- Is a parent treating the school or members of its staff unreasonably?



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Requirements for parent/pupil matters

- ISSR/NMS/EYFS
- Guidance – KCSIE/searching, screening & confiscation
- Parent contract – duty to comply with the law/to act fairly & reasonably
- School policies:
 - School principles/CoC/rules
 - Behaviour and discipline/ERR
 - Safeguarding/Anti-bullying/ICT policies
 - Complaints



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Useful guidance

- ACAS guidance (although not directly applicable)
- ISI Commentary on the Regulatory Requirements (2022)
- Best practice for school complaints procedures (2020/2021) (DfE)
- Charity Commission guidance: The Essential Trustee: what you need to know, what you need to do (2018), the Charity Governance Code (2017/2020), Safeguarding and protecting people for charities and trustees (2017/2022).



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Case study

A local school has complained about the conduct of your pupils at an away sports fixture. They have provided their analysis of what happened and are threatening to involve the police. You have decided to commission an investigation.

What should the investigator be asked to do?



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Analogy with employment process?

- YES
 - Organisational preparation is key – need clarity and to ensure a fair process
 - Similar requirements re investigator's appointment/preparation/remit
- BUT
 - generally no need for different investigator and decision-maker AND
 - rules about recording/reporting differ.



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Gathering evidence

Consider whether:

- The victim or relevant agencies have expressed a view about process
- Anyone can/should be informed of the investigation before you start, esp. parents
- Search of pupils/devices/belongings is warranted & if so the arrangements for this
- There is a risk of collusion
- Meetings are required and, if so, how best to elicit the required information
- Pupils should be accompanied? If so, by whom?
- Should the meetings be recorded/noted?



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Other school investigations

- Health and safety incidents/near misses
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Case study

A member of kitchen staff lit a burner and in doing so singed their eyebrows. As they were leaving the school, they submitted a PI claim. The incident had not been reported at the time.

How would you address this?



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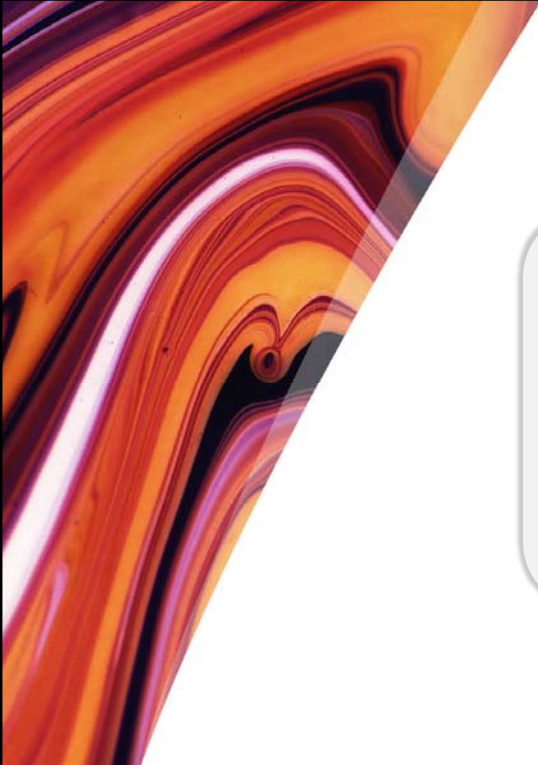
Case study

Your EVC is arranging a residential school trip. They have collated information about the medical and welfare needs of the group, as well as their emergency contact details for the staff attending. In error they upload this information to the school's trip portal so that it is accessible to all attendees and their parents.

How would you investigate this?




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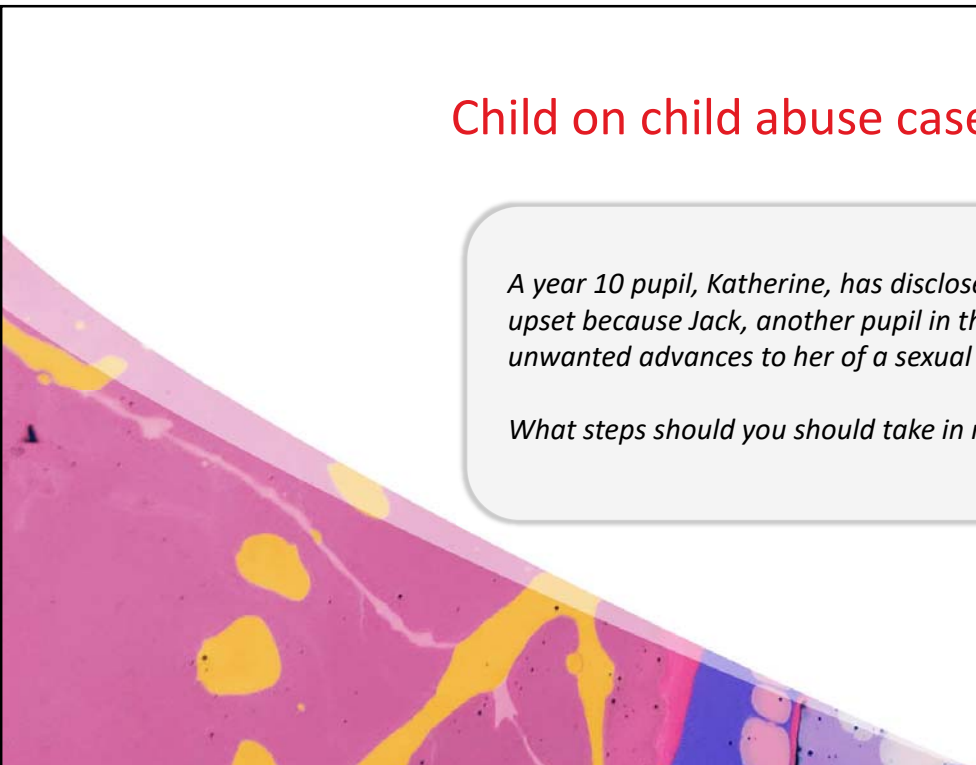
Case study

You have read a social media post which is damning of the school's past management of safeguarding issues. It alleges that there was a culture of cruelty at the school in the 1980s.

Who can/should decide whether or not investigation is warranted and, if so, how it is done?




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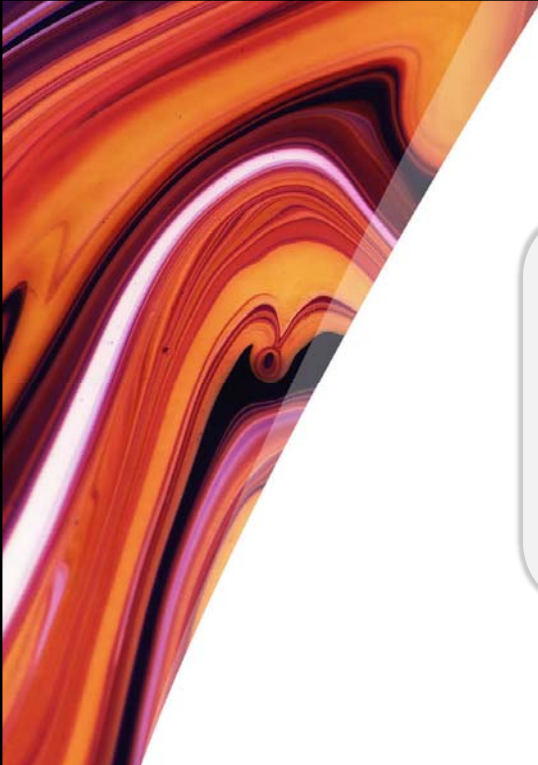
Child on child abuse case study – Part 1

A year 10 pupil, Katherine, has disclosed that her friend, Leila, is upset because Jack, another pupil in the same year, has made unwanted advances to her of a sexual nature.

What steps should you should take in response to this report?



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Case study – Part 2

You speak to Leila who says that Jack had been hassling her on social media and wouldn't accept that she was not interested in a relationship with him.

She says it's under control and she doesn't want any action to be taken.

What would you do at this stage?


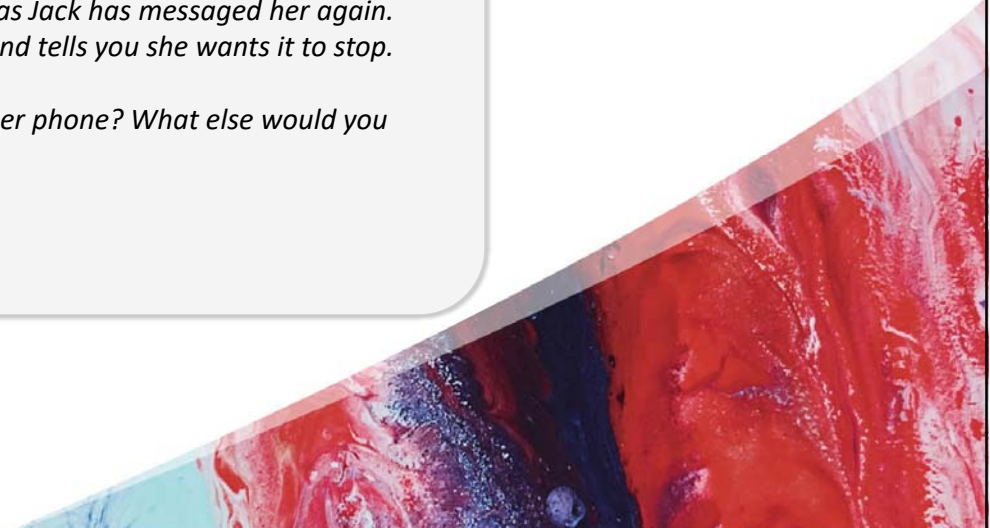


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Case study – Part 3

Leila comes to see you as Jack has messaged her again. She is angry with him and tells you she wants it to stop.

Should you ask to see her phone? What else would you do?



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Case study – Part 4

Leila comes to see you as Jack has messaged her again. This time she is in tears and obviously distressed. She says that this has been 'going on for a while now' and that it all started at a friend's party in the summer holidays when Jack tried to kiss her. When she avoided this, she says he grabbed her, pushed her against a wall and squeezed her breast with his hand. She says she was frightened. She tells you she wrestled herself free and found her friends. She did not report this to anybody at the time.

Would this change your approach to investigating the matter?



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Case study – Part 5

The police have spoken to Leila who does not want to make a victim statement. They have decided to take no further action.

Should the school investigate matters itself? If so, what would you seek to investigate and how would you do this?



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Top tips

- Inform parents and pupils as soon as you can
- Support all those involved
- Manage expectations – be clear about who will be told, process, timing and possible implications (even if you are restricted in what you can say, explain what you can)
- Ensure fair process & proportionate response – where possible follow your own procedures, but if you can't or it is not appropriate to do so, explain why not and seek agreement to any suggested variation.



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Top tips cont-

- Manage scope creep, but do consider wider context (esp. in bullying and safeguarding matters)
- Consider what you are going to write down and why (& in particular the level of detail to be included in a decision/report). Should those involved be named?
- Seek external advice/support - and record it!
- Keep a chronology and include decision-making and communications about the investigation in it
- If you can, inform those involved of the outcome.



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Get in touch



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