

Guidance on Low-level Concerns

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This is a guidance note for Schools, Trusts and Managers only. It is not a policy or statutory practice and has been developed to assist you in specific situations.

This document can be used to assist with policy implementation but does not form part of the relevant policy. It is recommended for use alongside relevant policies and procedures.

Please contact HR Services for further advice: hrrservices@hertsforlearning.co.uk/ 01438 544463.

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1. Introduction

The statutory guidance, Keeping Children Safe in Education (KCSiE) 2022 includes new guidance for schools and trusts on dealing with low-level concerns about the behaviour of staff working with children.

The purpose of this guidance is to create and embed a culture of openness, trust, and transparency in which the clear values and expected behaviour are reinforced to all staff, including supply teachers, volunteers and contractors, as set out in the staff code of conduct.

This guidance covers low-level concerns that do not meet the harm threshold. An allegation may meet the harm threshold where it is alleged that a person who works with children has:

- 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
- behaved towards a child or children in a way that indicates they may pose a risk of harm to children
- behaved or may have behaved in a way that indicates they may not be suitable to work with children.

Allegations that may meet the harm threshold should be assessed accordingly and advice should be sought from the Local Authority Designated Officer (LADO) and/or HR Services.

This guidance should be used in conjunction with the School/Trust's Code of Conduct, disciplinary and safeguarding policy, and procedures.

2. What is a low-level concern?

The term 'low-level' concern does not mean that it is insignificant, it means that the behaviour towards a child does not meet the prescribed threshold. A low-level concern is any concern – no matter how small, even if it is just causing a sense of unease or a 'nagging doubt' - that an adult working in or on behalf of the organisation may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work
- is a cause for concern but does not meet the threshold of harm or is not considered serious enough to refer to the LADO.

Low-level concerns are part of a spectrum of behaviour including inadvertent or thoughtless behaviour; behaviour that might be considered inappropriate depending on the circumstances; and/or behaviour which is intended to enable abuse.

Examples of such behaviour could include, but are not limited to:

- 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
- using inappropriate sexualised, intimidating, or offensive language.

3. Why do schools/trusts need to respond to low-level concerns?

KCSiE now states that Schools/Trusts should have a low-level concerns policy and procedure in place. These should form part of your School's/Trust's overall safeguarding and child protection policies and procedures. It should also form part of an existing staff code of conduct.

Having clear procedures for responding to low-level concerns is part of creating a culture of openness and trust. It helps ensure staff consistently model the School/Trust's values and helps keep children safe. It will also protect members of staff working with children from potential false allegations or misunderstandings.

4. What do schools and trusts need to do?

There should be clear processes in place for sharing and responding to any concerns about an adult's behaviour, no matter how small. A concern can still be significant even if it does not meet the threshold of harm.

The School/Trust should ensure that their low-level concerns policy contains a procedure for sharing confidentially such concerns which is clear, easy to understand and implement. Whether all low-level concerns are shared initially with the Designated Safeguarding Lead or with the Headteacher/Principal is a matter for the School/Trust to determine. The DSL should inform the Headteacher/Principal of all low-level concerns in a timely fashion according to the nature of each low-level concern. The Headteacher/Principal should be the ultimate decision maker in respect of all low-level concerns, although it is recognised that depending on the nature of some low-level concerns the Headteacher/Principal may wish to consult with the DSL and take a more collaborative decision in making approach.

Where concerns or allegations relate to the Headteacher/Principal, this should be referred to the Chair of Governors, Chair of the Management Committee, or the proprietor of an independent school. Where there is a conflict, the matter should be reported directed to the Local Authority Designated Officer (LADO).

The School/Trust should share low-level concerns about supply staff and contractors with their employers, so that any potential patterns of inappropriate behaviour can be identified.

Schools/Trusts should ensure all adults understand:

- what constitutes appropriate and inappropriate behaviour
- what a low-level concern is
- the importance of sharing low-level concerns
- how to report any concerns
- the process for recording, reviewing and responding to concerns.

5. Monitoring and review

School/Trusts should retain all records of low-level concerns, including behaviour which is not entirely consistent with the staff code of conduct. Records should include:

- A clear and comprehensive summary of the concern.
- Details of how the concern was followed up and resolved.
- A note of any action taken, decisions reached, and the outcome.
- The name of the individual sharing concerns – if the individual wishes to remain anonymous, this should be respected as far as reasonably possible.

Where multiple low-level concerns, regarding the same individual have been shared, these should be kept in chronological order with a timeline of events.

These records should be held securely and confidentially with limited access such as the Headteacher, Designated Safeguarding Lead (DSL) and line manager. The School/Trust can decide where these records are kept, but they must comply with the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR).

The Headteacher or DSL should review low-level concerns records periodically to ensure that such concerns are being dealt with promptly and appropriately, and that any potential patterns of concerning, problematic or inappropriate behaviour are identified. A record of these reviews should be made.

Upon review it may be found that:

- Behaviour is inconsistent with the staff code of conduct but there is no pattern of behaviour and does not meet the threshold of harm or is not considered serious enough to refer to the LADO.

Low-level concerns should be recorded and periodically reviewed.

- Whilst not sufficiently a cause for concern and may not meet the threshold of harm or considered serious enough to refer to the LADO; nonetheless merits consulting with and seeking advice.

Advice should be sought from the LADO or HR Services.

- When considered with any other low-level concerns that have previously been shared about the same individual, could now meet the threshold of an allegation, or in and of itself meets the threshold of an allegation.

This should be referred to the LADO/other relevant external agencies, and in accordance with the School/Trusts Safeguarding Policy and Part 4 of KCSIE.

6. Staff requests of anonymity

If the staff member who raises the concern wishes to remain anonymous, the School/Trust should respect the person's request as far as possible. However, there may be circumstances where the staff member will need to be named and for this reason, anonymity should never be promised to members of staff who share low-level concerns.

Where possible, staff should be encouraged to consent to be named, as this will help to create a culture of openness and transparency.

7. Data protection

The Data Protection Act 2018 (DPA 2018) is not a barrier to a low-level concerns procedure but an important factor to consider. Issues may arise when Schools/Trusts are providing employment references, setting retention periods and dealing with subject access requests. DPA 2018 includes a specific provision which permits organisations to process even the most sensitive personal data where it is necessary for the purposes of protecting children from harm. Low-level concerns recording must meet the relevant threshold of necessity.

Low-level concerns should not be included in references unless they relate to issues which would normally be included in a reference, for example, misconduct or poor performance. However, where a low-level concern (or group of concerns) meets the harm threshold for referral to the LADO and found to be substantiated, then it should be referred to in a reference.

School/Trust leaders should be mindful that staff they are making records about may have rights to access them through a subject access request (SAR). In consideration of this, Schools/Trusts should be mindful when recording low-level concerns, particularly where the issue relates to a specific child. If a child may be identifiable from the record, then it is likely to be inappropriate to share this record following a subject access request. Please contact your Data Protection Officer (DPO) for further advice.

9. Appendix 2 – Low-level concern form

It may be possible that a member of staff, supply staff, volunteer or contractor, acts in a way that does not cause risk to children but is inappropriate. A member of staff who has a concern about another member of staff should use this low-level concern form to share any concern – no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' – that an adult may have acted in a way that:

- is inconsistent with the staff code of conduct, including inappropriate conduct outside of work
- is a cause for concern but does not meet the threshold of harm or is not considered serious enough to refer to the LADO.

You should provide a concise record – including brief context in which the low-level concern arose, and details which are chronological, and as precise and accurate as possible.

Details of concern

Name of staff member:

Role:

Signed:

Date and time:

Action Taken: (Specify)

Signed:

Date and time:

Please note that low-level concerns will be treated in confidence as far as possible, but [Insert School/Trust name] may in certain circumstances be subject to legal reporting

requirements or other legal obligations to share information with appropriate persons, including legal claims and formal investigations.