

Complex safeguarding allegations

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04 April 2022

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There are over 600,000 teachers in establishments across the UK, in addition to many thousands of support, administrative and other staff members. Overwhelmingly, these staff members play a vital role in educating our young people and hold KCSIE as the fundamental principle of their role.

Regrettably, like any industry and any workforce, there are exceptions. In particular, there are occasions when staff behave in such a way that exposes them to criminal liability and, naturally, calls into serious question their suitability to carry out their role. Not only does this lead to disciplinary issues, in particularly serious circumstances it can lead to police and LADO involvement and a myriad of complications as a result.

This article will explore some of those complications and suggest a way through them.

The Pattern

When a staff member is accused of a serious criminal offence, a familiar pattern can often emerge:

1. the staff member is arrested by the police;
2. the LADO becomes involved;
3. the staff member is suspended by the School or Academy;
4. the LADO/police advise that no investigation can be completed until the police matter is concluded;
5. there is a delay for many months whilst the criminal process takes place;
6. there is a delay to the disciplinary process as a result.

Incidents such as these often give rise to disciplinary hearings and potential gross misconduct dismissals. In order to fairly dismiss an employee for gross misconduct, there are series of well-established steps, namely:

- in appropriate circumstances, suspension;
- an investigation into the allegation;
- a disciplinary hearing; and
- an appeal hearing.

A fair dismissal will, inevitably, require the employer to follow not only their own internal disciplinary policy, but also the ACAS Code of Practice. Fundamental to both is the principle of a fair process and an investigation. In the event that an employee wins an unfair dismissal claim, they can be awarded compensation of up to one year’s gross pay plus other sums. In addition, a Tribunal can adjust compensation up or down based on a series of factors, including what impact following a different process would have had on compensation or the employee’s own conduct.

The Conflict

However, police action can often stifle the investigation. Often, internal processes are placed in stasis: a form of suspended animation where nothing can happen, despite the fact that everyone knows, including the employee, that a return to work is most likely impossible.

As a result, the School or Academy is exposed to:

- cost, in terms of paying the employee for months, potentially years, on end;
- disruption, in terms of not being able to replace an employee or, perhaps, even explain their absence;
- delay, in terms of moving on from the issue and hiring a replacement; and
- risk of negative publicity in the event that the incident in question becomes public knowledge.

Ultimately, this situation is in no-one's best interests.

The Solution?

All too often, employers look at the risk of dismissing on a worst-case scenario basis and are focused rigidly on process and procedure. They do not consider the realistic outcomes of a dismissal that does not follow each and every step, as set out in the ACAS code or their disciplinary procedure.

When considering what action to take, it is important to discuss it with the LADO and/or police, so that any action that is taken does not prejudice a criminal investigation; however, the employer should also consider stepping out of their comfort zone and ask themselves these questions, when considering how to address cases like these:

1. What impact will there be if we don't follow our processes to the letter? Is there another way we could approach this issue? Often, the legal risk of proceeding now vs the legal risk of delaying are one and the same; often, the risk doesn't increase at all.
2. Is the employee, realistically, going to bring a Tribunal claim? In very serious cases a custodial sentence is inevitable, which means they cannot deal with a Tribunal claim in any event. Claims in these circumstances are quite rare.
3. What are the realistic consequences if we proceed now, based on the information we have? It may be there are no adverse consequences.
4. In particular, even if we do lose a Tribunal claim, what compensation will be awarded? Is it more or less than the cost of waiting? Often, it will cost less to proceed to dismiss now.
5. How will our risk profile be reduced if we wait? What impact will the 'perfect' case have on that risk? The perfect procedural case often has little or no impact on the underlying risk.
6. If we wait, what problems does that create? What additional safeguarding issues does it create? What publicity are we facing? Ask yourself, "What do we want to be famous for: dismissing an employee, or employing one for two years who ends up convicted of a serious criminal offence?"
7. Finally and most importantly, what decision is in the best interests of the children, in particular, bearing in mind their education and KCSIE? Often, that may be dismissing quickly and quietly.

That last question is, fundamentally, the most important. It is the reason that Schools and Academies exist, and it should form the framework for our decision making when addressing complex issues like this.

This article was first published by [TES](#) on 24 March 2022

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