

**Department for Education and Skills
Proposals for dealing with allegations against
teachers and other staff
10th February 2005**

1. NASUWT is the largest union representing teachers and headteachers throughout the UK. The Union has maintained a national database of false, malicious and exaggerated allegations since 1991. It was through the collection of this data that NASUWT was able to identify and highlight publicly the high incidence of false allegations and the devastating effect on teachers' lives and careers.
2. NASUWT welcomes the opportunity to comment on this consultation document. The Union is very pleased that the issues raised in its campaigns and representations on this important issue are reflected in the proposed measures. NASUWT is particularly pleased to note that the detailed casework analysis, undertaken by the DfES jointly with NASUWT, has proved invaluable in drafting the proposals.
3. The proposals in the consultation document refer only to England. Teachers throughout the UK face the same problems with regard to allegations and NASUWT urges the Westminster Government to liaise with colleagues in devolved governments to adopt the measures implemented in England as a result of this consultation process.
4. NASUWT has not completed the questionnaire but has sought to address the issues raised in the questions in this response.

GENERAL COMMENTS

5. The proposals in the consultation document are on the whole clear and represent a genuine improvement on the inadequate and unjust current system. They should have a positive impact on the well being of education staff who face false, malicious or exaggerated allegations by reducing timescales and providing consistency in the procedures.
6. The Union very much welcomes the consultation document and the thought, time and effort that has evidently gone into its production.
7. There will be a need to ensure that the work being undertaken to implement the recommendations arising out of the Bichard Inquiry compliments the measures proposed in this consultation document.

SPECIFIC COMMENTS

Adoption of the measures in appropriate settings

8. NASUWT agrees with the assertion in the document that all staff working with children are potentially vulnerable to allegations and supports the suggestion that these procedures should be adopted in all other appropriate settings.
9. NASUWT recommends that they should be applied specifically to supply, agency and short notice staff. It is too often the case that no one takes responsibility for ensuring that this important group of staff have access to the same procedures and protections as permanent staff.
8. The NASUWT also agrees that everyone who is vulnerable to allegations of child abuse, including volunteers, should have access to a process by which they can be exonerated if that is the appropriate outcome.

Anonymity

9. The NASUWT has campaigned for many years to ensure where allegations are made they are resolved quickly and without unwarranted publicity. The DfES is fully aware of the Union's position on anonymity. It is NASUWT policy that those subject to allegations should remain anonymous until a court decision. The Union recognises the complexities of amending primary legislation, and the potential wider impact on other processes of moving to a statutory entitlement. However, as an initial measure the proposal for anonymity to be maintained until a person is charged is a very welcome and significant step forward. The revised Association of Chief of Police Officers' (A.C.P.O) guidance to the police on anonymity until the point of charge very helpful in this regard. To strengthen this NASUWT would recommend that any breach of this guidance by a police officer should be considered a disciplinary matter.

11. The proposal that the Government monitors closely the position and the effectiveness of the operation of the safeguards put in place to seek to secure anonymity is welcomed by the NASUWT. The close monitoring of the system of self-regulation overseen by the Press Complaints Commission is particularly important. However, the Union remains to be convinced that the press will abide by this when set against the possibility of what is perceived to be a salacious story.

Redress for malicious allegations

12. Many teachers who have faced the trauma and distress of a malicious allegation have been dismayed that there is no satisfactory redress against the perpetrator. NASUWT has no evidence of the police ever having considered a criminal sanction against someone who is proved to have made a malicious allegation and NASUWT recommends that there should be an obligation placed on the police to consider appropriate action against an accuser who is proved to be malicious.

Resignations

13. The NASUWT is pleased to see the acceptance in the consultation document that resignation by a person facing an allegation does not imply guilt. The Union always advises members to complete the procedures to clear their name. However, it is a fact that some teachers cannot face the stress and anxiety that they and their families experience and, therefore, understandably take this route to seek to bring an end to the trauma. The proposed new procedures, with the emphasis on shortened timescales, should help to reduce the number of teachers who feel they have no alternative but to resign.
14. The NASUWT agrees that the procedures once started should be followed to a conclusion, regardless of whether a person involved has resigned. The Union believes that it is in the interests of the teaching profession that there are no unresolved or incomplete cases.

Appointment of a senior officer

15. The NASUWT welcomes the proposal for the appointment of a senior local authority (LA) officer to take responsibility for the oversight of allegations. This is an extremely important part of the process. A senior officer with experience and appropriate training can bring an overview, consistency and fairness to the procedures. They will be in a position to provide sound advice and prevent an inappropriate reaction by schools in circumstances where allegations of this type have never been made before.
16. NASUWT also welcomes the proposal that the police and social services identify a senior official to oversee allegations. The senior police and social services officers, together with the LA officer, have the potential to constitute an informed and experienced team.

Timescales

17. The proposal to set indicative target timescales for each stage of the process is an excellent development. For far too long, timescales in

allegation cases have been unacceptably protracted and information about progress either absent or extremely poor. The proposal for rigorous monitoring of the timescales is crucial and NASUWT recommends appropriate action to enforce them if local authorities are found to be failing to adhere to the standards.

Regular Review of Progress

18. NASUWT considers the proposal for fortnightly review of progress to be an excellent development. Reviews of this type should reduce significantly the possibility of cases running for months to the detriment of the person against whom the allegation is made, their family, the pupils concerned and other staff in the school.
19. NASUWT recommends the inclusion of an additional clause which would require a written report of the outcome of the review to be given to the member of staff and/or his/her union representative.
20. One of the most harmful features of current procedures is that the person facing an allegation is often not informed what is happening, what decisions are being made, or what stage the investigation has reached. A review report would address this problem.

Definition of an allegation

21. NASUWT agrees broadly with the proposed definition of an allegation. However, whatever the definition there will always need to be a degree of rigour and common sense used by those considering an allegation and whether to pursue it. It is, for example, ridiculous that a teacher can be investigated under an allegation of abuse for simply leading a child to his seat, as happened in one NASUWT case. The NASUWT appreciates the sensitivities and the importance of allegations being taken seriously, but it cannot be right that a process is started in circumstances where all the standards any agency involved in child protection would be expected to apply have been and there is no evidence of wrongdoing. In cases where a teacher is exonerated,

NASUWT recommends that the procedure should advocate that it should not be necessary to record any other data on a police file which may subsequently be disclosed to the CRB.

22. With the involvement of dedicated local authority, social service and police officers there should be fewer cases of teachers subjected to child protection procedures in instances where they have followed the 1996 Act and guidance appropriate for their setting on the use of physical restraint.

23. It must also be recognised by those considering allegations that there is evidence to demonstrate that some managers attempt to use an allegation as an excuse to remove an employee whom they perceive to be 'difficult' for one reason or another. Child protection routes are pursued instead of the real problem being addressed or appropriate training, support and advice provided. NASUWT casework illustrates that it is more often experienced teachers who face allegations who have a long history of service to a school, but under new leadership their contribution, teaching style, approach to their work may not conform to the expectations of new management. The NASUWT recommends that the advice from the DfES should emphasise that the appropriate alternative procedures should be used where there are perceived to be issues other than child protection ones.

Centrally employed investigators

24. The NASUWT welcomes the proposal for the establishment of a team of centrally employed investigators. NASUWT has headteachers in membership and recognises how vulnerable and unsupported they feel in exercising their professional judgement when allegations are made. The establishment of a trained pool of centrally employed investigators will provide an additional route by which consistency can be maintained in the procedures and additional support can be provided to heads/managers.

25. The NASUWT recommends that a standard format for the investigative report should be developed to provide national consistency and clarity. To achieve independence in the report writing, NASUWT is of the view that the person designated to do this should not be attached to the school in any way e.g. the LEA school link officer.
26. The proposal for funding the trained pool of investigators through LEA HR contracts with schools or by schools buying in the support is generally acceptable. It should, however, be monitored closely as it would be inappropriate for heads or teachers facing allegations to be denied access to this independent service on the grounds of cost.
27. NASUWT advises caution on the proposal to identify an objective investigator from within a school's resources. It would be difficult to identify someone truly objective. If this proposal is to remain then NASUWT believes it should be qualified by the person accused having the facility to opt for an external independent investigator.

Fast-track procedures

26. In principle NASUWT welcomes the proposals in the paper to speed up the procedures, providing that speed does not become a bar to fairness. 15 to 20 days might be more realistic for the investigation and report writing part of the process. The reason for this is that often there is a large number of potential witnesses identified by the parties. 10 days is a very short timescale to conduct the necessary interviews. The timescale should be in line with already established disciplinary procedures.
27. Clarification is required on the role of the investigating officer if an allegation falls. NASUWT would not support the officer's role in making the recommendations about the appropriateness of the disciplinary process.

28. The NASUWT wholeheartedly agrees with the proposal for the police to obtain consent for information given by the victim and witnesses to be used for the purpose of disciplinary and regulatory proceedings at the time statements are taken. This will speed up the handover of cases to employers.

Monitoring and evaluation

29. The proposed Investigation and Referral Support Coordinators will be extremely helpful to the various agencies in setting systems in place, as they will have insight and expertise in the problems faced by employees. NASUWT would, however, caution against the exclusive use of the coordinators to advise on these issues. NASUWT could make a valuable and informed input into the development of the proposed systems, as has already been demonstrated. NASUWT and other teacher unions should, therefore, be part of the consultation process.
30. The intention to ensure there is a nationwide system introduced and monitored is welcome.
31. In this context, NASUWT reiterates its request that the Westminster Government brings influence to bear on Wales, Scotland and Northern Ireland to introduce similar procedures. NASUWT casework, specifically in Northern Ireland, demonstrates that procedures there already lag far behind those in England on the protection of staff from malicious, false or exaggerated allegations.
32. Monitoring and evaluation of the new arrangements is essential if staff are to have confidence in the procedures and the proposal for this to be carried out on a comprehensive and formal basis is welcome.

ADDITIONAL COMMENTS

Involvement of the CPS

33. The involvement at an earlier stage of the Crown Prosecution Service (CPS) and the suggestion that a decision be made within a four week

period is welcomed by NASUWT. However, an evaluation of whether additional resources are required to enable the police and particularly the CPS, which is reported to be facing a staffing crisis, to carry this out may be required.

Timescales

34. NASUWT recommends that the timescale is consistent with that provided for within LEA disciplinary policies which should have been negotiated with the trade unions. The timescale has to allow for adequate notice, the formation of a response to the report, the submission of papers and other case preparation.

35. The NASUWT would like to make a number of comments about the timescales proposed in paragraphs 2.48/2.55 of the consultation document. The Union has already commented previously in that procedures can be operated too quickly and so be a bar to fairness.

The definition of 'appropriate action'

36. Reference is made to 'appropriate action' but there is no explanation of what this means. If it refers to the meeting the allegations manager will convene with the head and chair of governors mentioned in 2.62, there should be a cross reference to this paragraph if this is the case. If not, further explanation is required.

37. Reference is made to the possibility of a hearing not being necessary. What 'appropriate action' is, therefore, being proposed? It is essential to clarify this. If it is the intention that the 'appropriate action' is a meeting with appropriate parties to identify a date and a process to enable the member of staff to return to school, the guidance should specify this.

38. To support this the NASUWT recommends wording along the lines of:

'If a suspended member of staff is not dismissed and is fit to return to work, a meeting to secure a return to work, with appropriate

persons, including the member of staff's trade union representative, should be arranged within 3/5 days'.

Reports to employers following acquittal

39. NASUWT recommends that the report sent by the police to the employer in the case of an acquittal should be a comprehensive one. Experience demonstrates that in internal proceedings representatives often have to repeat the process of challenging witness statements, when this has already been done in court and has been a key factor in the acquittal.

Extension of the application of the proposals

40. NASUWT welcomes the stated intention of the DfES to encourage LEAs to provide a service to Independent schools, Academies, Technology colleges and Further Education institutions, including 6th Form colleges. Teachers in these establishments are no less vulnerable than those in maintained schools. NASUWT would prefer appropriate regulations to ensure LEAs are obliged to provide such a service and the establishments listed are required to participate.

In summary the NASUWT recommends that:

- any breach of the ACPO guidance on anonymity by a police officer should be investigated and considered under the police disciplinary procedures;
- an obligation is placed on the police to consider appropriate action against an accuser who is proved to be malicious;
- appropriate action is taken to enforce the timescales laid down in the procedures if local authorities fail to adhere to the standards set;
- a written report of the outcome of each regular review of progress be included in the procedures and provision made for the report to be provided to the member of staff and/or his/her union representative;

- in circumstances where a teacher is exonerated, data should not be recorded on police files which may subsequently be disclosed to the CRB;
- guidance from the DfES should emphasise that child protection procedures should not be used in circumstances where it is clear that alternative procedures for dealing with a teacher's conduct are more appropriate;
- the person who is the subject of the allegation should be given the facility to opt for the involvement of an external independent investigator;
- similar procedures be introduced in Wales, Scotland and Northern Ireland;
- where a suspended member of staff is not dismissed and is fit to return to work, a meeting to secure a return to work, with appropriate persons, including the member of staff's trade union representative, should be arranged within 3/5 days;
- in the case of an acquittal, the report sent by the police to the employer should be a comprehensive one, detailing how the evidence was handled by the court to remove the need for representations to be made on all the evidence again;
- appropriate regulations should be introduced to ensure that the procedures on dealing with allegations apply in independent schools, academies, technology colleges and further education institutions, including 6th Form colleges, where teachers are no less vulnerable to these allegations.

NASUWT would be pleased to provide any further information which may be required and to participate in research or additional consultation.

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General Secretary

9 February 2005

For further information on the Association's response contact Mary Howard, Assistant Secretary, Regions and Casework.

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