FIVE ACRE WOOD SCHOOL

Growing and Learning Together

Kent County Council
kent.gov.uk

# Low Level Concerns Policy

## June 2024

**Article 3 – Adults must do what's best for me**


**Article 12 – I have the right to be listened to, and taken seriously**


**Article 19 - I have the right to be protected from being hurt or badly treated.**


**Article 23 – If I have a disability, I have the right to special care and education**


**Article 28 – You have the right to a good quality education. You should be encouraged to go to school to the highest level you can.**

# Key Contact Personnel in School

**Nominated Member of Leadership Staff Responsible for the policy: Sarah Costain**

**Designated Safeguarding Lead: Sarah Costain**

**DPO: Sarah Costain**

**Date written: June 2023**

**Due for Review: June 2024**

**Date agreed and ratified by Governing Body: July 2023**

**Date reviewed: June 2024**

**Date agreed and ratified by Governing Body: July 2024**

**Due for Review: June 2025**

**This policy will be reviewed following any concerns and/or updates to national and local guidance or procedure**

Five Acre Wood School Low Level Concerns Procedures

**Introduction and Aims**

**This policy aims to set out guidance for all staff at Five Acre Wood School with regards to raising low level concerns**

Five Acre Wood School aims to create a culture in which all safeguarding concerns and allegations about adults (including those that do not meet the harm threshold) are shared responsibly and with the right person. It is crucialthat concerns are recorded and dealt with appropriately. If implemented well this should encourage an open and transparent culture; enable Five Acre Wood School to identify inappropriate, problematic or concerning behaviour early; minimise the risk of abuse; and ensure that adults working in or on behalf of the school are clear about professional boundaries and act within them, in accordance with our ethos and values.

Behaviour which is inconsistent with the standards and values of staff at Five Acre Wood, and which does not meet the schools' expectations outlined in the staff code of conduct, needs to be addressed.

Such behaviour can exist on a wide spectrum – from the inadvertent or thoughtless, through to that which is ultimately intended to enable abuse. Where a concern or allegation about an individual's behaviour may meet the harm threshold, clear guidance exists on how Five Acre Wood should report, record, and manage it.

Where a concern or allegation falls below that threshold the position was much less clear until the Department for Education (DfE) published its then revised statutory guidance for schools and colleges in England, Keeping Children Safe in Education September 2021 – and with further changes made in September 2022 and 2023.

The purpose of the policy is to create and embed a culture of openness, trust, and transparency in which the clear values and expected behaviour which are set out in the staff code of conduct are constantly lived, monitored and reinforced by all staff.

This policy focuses on low-level concerns regarding adults' behaviour with respect to children including:

- Sharing concerns about the behaviour of other adults, or self-reporting concerns; an adult may have acted in a way that contravenes the relevant staff code of conduct, including inappropriate conduct outside of work – and does not meet the harm threshold, or is otherwise not serious enough to merit a referral to the LADO. The behaviour may not relate directly to a particular child or children but may nonetheless raise an issue or issues of concern with respect to safeguarding a child/children and may potentially call into question the adult's suitability to work with children.

**Definition:** Concern or allegation that may meet the harm threshold. This means the behaviour in question might indicate that a person will pose a risk of harm if they continue to work in their present position, or in any capacity with children (i.e., in connection with their employment or

voluntary activity) – a concern is raised/it is alleged that they have:

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

**Managing allegations which may meet the harm threshold**

In terms of managing concerns or allegations that may meet the harm threshold, these might indicate a person would pose a risk of harm if they continue to work in their present position, or in any capacity with children in a school or college includes behaviour that may have happened outside of school or college, that might make an individual unsuitable to work with children, which is known as transferable risk; and where appropriate, an assessment of transferable risk to children with whom the person works should be undertaken, and if in doubt, advice sought from the LADO.

Paragraph 71 of KCSIE states that:

"Schools and colleges should have processes and procedures in place to manage **any** safeguarding concern or allegation (no matter how small), about staff members (including supply staff, volunteers, and contractors)."

(Paragraph 72 of KCSIE states that:

"If staff have a safeguarding concern or an allegation is made about another member of staff (including supply staff, volunteers, and contractors) harming or posing a risk of harm to children, then:

- recorded on myconfide, if you are unsure please speak to HR, Lead DSL, Headteacher or Principal
- where there is a concern/allegation about the headteacher or principal, this should be referred to the chair of governors and
- in the event of a concern/allegation about the headteacher, where the headteacher is also the sole proprietor of an independent school, or a situation where there is a conflict of interest in reporting the matter to the headteacher, this should be reported directly to the LADO on 03000 41 08 88 or email kentchildrenslado@kent.gov.uk.

**Importance of sharing low level concerns**

Paragraph 153 of KCSIE states that

> "Governing bodies and proprietors should ensure there are procedures in place, as described in paragraphs 71 and 72, for staff to report concerns or allegations that may meet the harm threshold about staff members (including supply staff, volunteers, and contractors). These should be addressed as set out in Section one of Part four of this

guidance"

**Definition**:

Concern or allegation that does not meet the harm threshold: A low-level concern

The term 'low-level' concern does not mean that it is insignificant. A low-level concern is any concern – no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' – that an adult working with children may have acted in a way that:

- is inconsistent with Five Acre Wood Schools staff code of conduct, including inappropriate conduct outside of work; and
- does not meet the harm threshold; or is otherwise not serious enough to merit a referral to the LADO

Staff do not need to be able to determine whether the behaviour in question constitutes a low-level concern, or if it may meet the harm threshold. Once staff share what they believe to be a low-level concern, that determination should be made by the Headteacher/Principal and in consultation with the DSL if/as appropriate, or by the Safeguarding Lead. Any concerns should be reported using the MyConfide platform. If a member of staff is unsure as to whether a concern should be reported then they should speak to the Principal, Headteacher, Lead DSL or HR.

**Do any issues under data protection law arise?**

The Data Protection Act 2018 (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. For schools and colleges in England, it is clear, from KCSIE, that low-level concerns will meet the relevant threshold of necessity.

**What is the low-level concerns policy?**

It is a policy which enables all staff to share any concerns – no matter how small – about their own or another member of staff's behaviour with the relevant individual(s) stipulated within their organisation's policy.

Safeguarding and promoting the welfare of children is everyone's responsibility.

**To achieve this purpose, Five Acre Wood School will**:

- ensure that staff are clear about what appropriate behaviour is and are confident in distinguishing expected and appropriate behaviour from inappropriate, problematic, or concerning behaviour – in themselves and others, and the delineation of professional boundaries and reporting lines.
- empower staff to share any low-level concerns with the relevant individual(s) stipulated within their organisation's policy and to help all staff to interpret the sharing of such concerns as a neutral act.
- address unprofessional behaviour and support the individual to correct it at an early stage.

- identify inappropriate, problematic, or concerning behaviour – including any patterns – that may need to be consulted upon with (on a no-names basis if appropriate), or referred to, the LADO.
- provide for responsive, sensitive, and proportionate handling of such concerns when they are raised; and
- help identify any weaknesses in the organisation's safeguarding system.

**Appendix C**

**Spectrum of behaviour**

**Concern or allegation that may meet harm threshold**

Behaviour which indicates that an adult who works with children has:

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

**Low-level concern**

Does not mean that it is insignificant. A low-level concern is any concern – no matter how small, and even if no more than causing a sense of unease or a 'nagging doubt' – that an adult working with children may have acted in a way that:

- is inconsistent with an organisation's staff code of conduct, including inappropriate conduct outside of work; and
- does not meet the harm threshold, or is otherwise not serious enough to merit a referral to the LADO.

**Appropriate conduct**

Behaviour which is entirely consistent with the organisation's staff code of conduct, and the law.

**Procedure**

It is critical that all low-level concerns are ultimately reported using Myconfide. They are then received by either the Principal, Headteacher, Safeguarding Lead or HR. Having one central platform for recording all such concerns allows any potential patterns of inappropriate, problematic, or concerning behaviour to be identified, and ensure that no information is possibly lost.

**Should staff who share concerns be able to remain anonymous?**

If the staff member who raises the concern does not wish to be named, then Five Acre Wood School should respect that person's wishes as far as possible. However, there may be circumstances where the staff member who raises the concern will need to be named (for example, where it is necessary to carry out a fair disciplinary process) and, for this reason, anonymity should never be promised. Five Acre Wood School will try to encourage staff to consent to be named, as this will help to create a culture of openness and transparency.

**Should staff share concerns about themselves (i.e. self-report)?**

Occasionally a member of staff may find themselves in a situation which could be misinterpreted or might appear compromising to others. Staff should, proactively self-report – for example, if they know they are going to be in a situation which would be deemed a breach of the staff code of conduct, including, for example, where a member of staff.

- Has a child who is a student in the school – they may have the mobile phone number of their child's friend.
- Plays in an external sports team with a current student and they may be on a WhatsApp group with them; and
- Is having to drive a student somewhere – for example for an urgent medical appointment.

Equally, a member of staff may have behaved in a manner which, on reflection, they consider falls below the standard set out in the staff code of conduct.

Self-reporting in these circumstances can be positive for a number of reasons: it is self - protective, in that it enables a potentially difficult issue to be addressed at the earliest opportunity; it demonstrates awareness of the expected behavioural standards and self-awareness as to the individual's own actions or how they could be perceived; and, crucially, it is an important means of maintaining a culture where everyone aspires to the highest standards of conduct and behaviour.

KCSIE states that schools and colleges should ensure that they create an environment where staff are encouraged and feel confident to self-refer

**How should low-level concerns be shared and recorded?**

Where the low-level concern is provided verbally, the recipient of it should make an appropriate record of the conversation using MyConfide immediately following the discussion.

- Sound professional judgement will be exercised in determining what information is necessary to record for safeguarding purposes.
- If the individual has an opposing factual view of the incident, this should be fairly recorded alongside the concern.
- The record should include brief context in which the low-level concern arose, and concise details (which are chronological and as precise and accurate as possible) of any such concern and relevant incident(s). The record is automatically time and date stamped.

All low-level concerns should be responded to in a sensitive and proportionate way – demonstrating that concerns will be handled promptly and effectively whilst protecting staff from any potential false low-level concerns or misunderstandings.
Once the Principal, Headteacher, Safeguarding Lead, HR department have received the concern, they should (not necessarily in the below order but in an appropriate sequence according to the nature and detail of the concern):

- speak to the person who raised the concern (unless it has been raised anonymously), regardless of whether a written summary, or verbal concern form has been provided.
- speak to any potential witnesses (unless advised not to do so by the LADO/other relevant external agencies, where they have been contacted);
- speak to the individual about whom the low-level concern has been raised (unless advised not to do so by the LADO/other relevant external agencies, where they have been contacted).

**Review the information and determine whether:**

- the behaviour is in fact appropriate – ie entirely consistent with the staff code of conduct and the law,
- the behaviour constitutes a low-level concern,
- there is any doubt as to whether the information may meet the harm threshold, in which case they should consult with their LADO,
- the behaviour may meet the harm threshold, and should be referred to the LADO/other relevant external agencies, or
- when considered with any other low-level concerns that have previously been shared about the same individual, the behaviour may meet the harm threshold, and should be referred to the LADO/other relevant external agencies,

**Make appropriate records of:**

- all internal conversations – including with the person who initially shared the low-level concern (where this has been possible), the adult about whom the concern has been shared (subject to the above), and any relevant witnesses (subject to the above);
- all external conversations – for example, with the LADO/other external agencies their determination (where they have been contacted, and either on a no-names or names basis);
- the rationale for their decision; and
- any action taken.

If it is determined that the behaviour is entirely consistent with Five Acre Wood Schools staff code of conduct and the law:

- it will still be important for the Principal, Headteacher, Safeguarding Lead, HR department to update the individual in question and inform them of the action taken as above.
- in addition, the Principal, Headteacher, Safeguarding Lead, HR department should speak to the person who shared the low-level concern – to provide them with feedback about how and why the behaviour is consistent with the organisation's staff code of conduct and the law.
- such a situation may indicate that:
    - ❖ the staff code of conduct is not clear.
    - ❖ the briefing and/or training has not been satisfactory; and/or

- ❖ the low-level concerns policy is not clear enough

If the same or a similar low-level concern is subsequently shared by the same individual, and the behaviour in question is also consistent with the staff code of conduct, then an issue may need to be addressed about how the subject of the concern's behaviour is being perceived, if not about the behaviour itself, and/or Five Acre Wood School may need to look at the implementation of its low-level concerns policy

**If it is determined that the behaviour constitutes a low-level concern:**

- any investigation of low-level concerns should be done discreetly and, on a need, -to-know basis.
- most low-level concerns by their very nature are likely to be minor. Some will not give rise to any ongoing concern and, accordingly, will not require any further action. Others may be most appropriately dealt with by means of management guidance and/or training.
- in many cases, a low-level concern will simply require a conversation with the individual about whom the concern has been raised.
- any such conversation should include being clear with the individual as to why their behaviour is inappropriate, problematic, or concerning, what change is required in their behaviour, enquiring what, if any, support they might need in order to achieve and maintain that, and being clear about the consequences if they fail to reach the required standard or repeat the behaviour in question.
- Ongoing and transparent monitoring of the individual's behaviour may be appropriate. An action plan or risk assessment which is agreed with the individual, and regularly reviewed with them, may also be appropriate.
- some low-level concerns may also raise issues of misconduct or poor performance which are unrelated to safeguarding.

The Principal, Headteacher, Safeguarding Lead, HR department should also consider whether this is the case – by referring to the organisation's disciplinary and/or capability procedure and taking advice from HR on a named or no-names basis where necessary.

If the Principal, Headteacher, Safeguarding Lead, HR department considers that the organisation's disciplinary or capability procedure may be triggered by the low-level concern(s) they should refer the matter to HR. Any such referral should be made by the Principal, Headteacher, Safeguarding Lead, HR department having received the low-level concern and not by individual staff members.
Equally, it is essential that there is close liaison and appropriate information sharing between the Principal, Headteacher, Safeguarding Lead, HR department, so that a holistic view of the individual can be taken.
Where a low-level concern does not raise misconduct or poor performance issues, it will not be a matter for HR.

- KCSIE states that where a low-level concern relates to a person employed by a supply agency or a contractor, the concern should shared with their employers, so that any potential patterns of inappropriate behaviour can be identified.

- where low-level concerns do trigger the organisation's disciplinary, capability, grievance, whistleblowing or other procedures, these procedures should be followed where appropriate. Where low-level concerns are raised which engage other procedures, it is sometimes difficult to determine how best to investigate the concern and which procedure to follow. Organisations should exercise their professional judgement and, if in any doubt, they should seek advice from HR and other relevant external agencies including the LADO.
- If HR advise that the organisation's disciplinary procedure is triggered, the organisation must ensure that the individual has a full opportunity to respond to any factual allegations which form the basis of a disciplinary case against them. If an organisation ultimately disciplines or dismisses a staff member for cumulative alleged 'breaches' of the staff code of conduct which were shared and dealt with as low-level concerns but not brought to the individual's attention, and to which they have not had a proper opportunity to respond, clearly there will be a lack of fairness and natural justice and the risk of a finding of unfair dismissal by an Employment Tribunal.

Staff therefore need to be trained to understand that when they share what they believe to be a low-level concern, the Principal, Headteacher, Safeguarding Lead, HR department will speak to the adult who is the subject of that concern – no matter how 'low' level the concern may be perceived to be, to gain the subject's account – and to make appropriate records, which may need to be referenced in any subsequent disciplinary proceedings.

If it is determined that the behaviour may meet the harm threshold, or when considered with any other low-level concerns that have previously been shared about the same individual, may meet the harm threshold:

- it should be referred to the LADO/ other relevant external agencies, and in accordance with the organisation's safeguarding policy or, if separate, managing allegations against staff policy, and Part 4 of KCSIE (which, whilst applicable to schools and colleges in England, also constitutes best practice for other organisations).

- all organisations (including schools and colleges in England) are, in any event, required to comply – in all matters relating to safeguarding – with the relevant procedures and practice guidance stipulated by their Local Safeguarding Partnership.

**How should low-level concerns be held?**

- Five Acre Wood School will retain all records of low-level concerns (including those which are subsequently deemed by the Headteacher/Principal or Safeguarding Lead to relate to behaviour which is entirely consistent with the staff code of conduct) in a central low-level concerns file (either electronic or hard copy).
- Where multiple low-level concerns have been shared regarding the same individual these should be kept in chronological order as a running record, and with a timeline alongside
- The records at Five Acre Wood School are held remotely use the MyConfide platform.

- Some low-level concerns may also involve issues of misconduct or poor performance, and may trigger an organisation's disciplinary, capability, grievance, whistleblowing, or other procedures.
- Where these issues would ordinarily require records to be made and retained on the staff member's personnel file, this should be done in the normal way, in addition to the records of the low-level concern(s) being retained in a central low-level concerns file.
- There may be circumstances where a low-level concern (or group of concerns) requires reclassification following determination by the Principal, Headteacher, Safeguarding Lead, HR department and/or recording on the relevant staff member's personnel file. In such case, we still consider it vitally important to retain the low-level concern(s) (as originally shared) on the central low-level concerns file, as well as on the personnel file. That is because the value of a central low-level concerns file risks being diluted if potentially significant contextual information is removed or divided across two separate files.
- Specifically, if a referral is made to the LADO/other external agencies where the behaviour in question:

(i) in and of itself may meet the harm threshold; or

(ii) when considered with any other low-level concerns that have previously been shared about the same individual may meet the harm threshold then records relating to the behaviour should be placed and retained on the staff member's personnel file, whilst also being retained on the MyConfide platform.

**Should the central low-level concerns file be reviewed?**

The Principal, Headteacher, Safeguarding Lead, HR department should review the central low-level concerns file periodically to ensure that all such concerns are being dealt with promptly and appropriately, and that any potential patterns of inappropriate, problematic, or concerning behaviour are identified.

KCSIE also states that it is for schools and colleges to decide how long they retain records of low-level concerns but recommends that they are retained at least until the individual leaves their employment. When a staff member leaves and/or takes up new employment, that creates a natural point at which the content of the file may be reviewed to ensure it still has value (either as a safeguarding measure or because of its possible relevance to future claims), and a decision made on that basis as to whether it is necessary to keep.

In most cases, a standard retention period in line with usual personnel records (ie six or seven years following the end of employment) is likely to be both lawful and practical for records of low-level concerns. If there is a clear safeguarding purpose for retaining specific information, then – in line with other records of safeguarding value – such information should be retained for the longer term; similarly, longer-term retention is also justifiable (and to be recommended) where a record may be necessary to keep in connection with an employment claim, or a claim brought by a pupil. However, as KCSIE makes clear, such retention periods are for the data controller (school or college) to determine in accordance with their needs – subject to KCSIE's recommendation (ie at least for the term of employment).

Some organisations may be using software which can make it difficult to permanently erase

records, and it is recommended in such cases to speak to the provider about available options. One such option may be anonymisation. It may, for example, be of analytical or statistical value to retain records of low-level concerns reporting longer term for the purpose of detecting patterns and trends, but in such cases, it may not be necessary (or lawful) to keep such records in a form where any individual may be identifiable.

**Should a low-level concern be referred to in a reference?**

Although not required to do so, other organisations may wish to follow KCSIE as a matter of best practice. In our experience, this approach has been important in ensuring an open and transparent culture with staff. However, if other organisations choose not to follow KCSIE in this regard, they should remain aware of their legal obligations and duty of care in giving accurate references.

**What is the role of the Governing Body (to which a written low-level concerns policy should also apply)?**

As highlighted above, the Governing Body should be equipped with the knowledge to provide strategic challenge to test and assure itself that the safeguarding policies and procedures in place at their school or college are effective and support the delivery of a robust whole school approach to safeguarding.
The Headteacher/Principal or Safeguarding Lead should regularly inform the Governaning Body about the implementation of the low-level concerns policy and any evidence as to its effectiveness. For example, by including reference to it in any safeguarding reports, and providing any relevant data so that any trends and patterns can be identified.
The Governaning Body should also review an anonymised sample of low-level concerns at regular intervals, to ensure that these concerns have been responded to promptly and appropriately.