Allegations Management Advisers

Unsuitable Adults

Guidance for employers when considering the behaviour of adults towards children

December 2007

AMA network established by

department for
children, schools and families

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1. Introduction

When allegations arise against a person working with children, the employer must follow the procedures outlined in Working Together to Safeguard Children 2006[1] These procedures allow for appropriate investigation by Social Care and Police and for disciplinary processes to be initiated should these prove necessary.

The guidance contained within this document is intended to inform and assist employers who have to assess the suitability of a person to continue to work with children when considering whether the behaviour of the adult has impacted upon, or has the potential to impact upon, the welfare of children.

The guidance will be of particular relevance when:

- A matter is first brought to the attention of the employer/senior manager
- Following a decision of a multi-agency meeting that the matter be investigated by the employer without a criminal investigation being started
- The matter has been referred to the employer after the Police or Crown Prosecution Service have determined that a charge, or prosecution, may not be appropriate
- The matter has been referred to the employer at the conclusion of legal proceedings

There is a range of behaviours which may cause concern to an employer but do not have a direct relationship to the welfare of children. In these circumstances, the employer should decide whether the employee's behaviour should be considered by his/her professional or regulatory body.

2. Status of this Document

This guidance does not replace or take priority over legal advice or any aspect of employment law. It is intended to complement existing professional procedures, protocols and practice and should be read alongside the Safe Practice document issued by the AMA network in November 2007.

3. Target Audience:

Local Authority Designated Officers; Elected Members; Governing Bodies/Management Boards; Employers; Professional Organisations working with or on behalf of children; Ofsted; Appeals Panels; Trainers and Advisors; Employment Tribunals; Trade Union Representatives; LSCBs.

The document will also be of interest to any individual who works, or whose organisation is contracted to work, in any capacity within the Children's Workforce.

[1] Working Together to Safeguard Children HM Government 2006

4. Statutory Framework

Working Together to Safeguard Children provides guidance about how to manage allegations against adults working with children and young people. It provides a framework for managing a wider range of allegations than those in which there is a reasonable cause to believe a child is suffering, or is likely to suffer, significant harm. It also caters for cases of allegations that might indicate that a person is unsuitable to continue to work with children in his or her present position, or in any capacity.

This means that:

- *employers should be familiar with Chapter 6 and Appendix 5 of Working Together and/or the LSCB procedures*

Working Together states that:

- All Local Safeguarding Children Boards (LSCBs) have responsibility for ensuring that there are effective inter-agency procedures in place for dealing with allegations against people who work with children.[2]

This means that:

- *these guidelines are applicable to **all** employers and organisations working with or on behalf of children and young people in all settings whatever their position, role, or responsibilities*

All organisations that provide services for children or provide staff or volunteers to work with or care for children should operate a procedure for handling such allegations that is consistent with guidance[3] and should identify a senior manager within the organisation to whom all allegations or concerns are reported.[4]

Working Together uses the following definitions which are applied throughout this document:

Adults
means an adult who (in either a paid or unpaid capacity) is employed, commissioned or contracted to work with or on behalf of, children and young people,

Manager
means those adults who have responsibility for managing services and/or supervising employees and/or volunteers.

Employer
refers to all organisations that have a working relationship with the individual against whom the allegations is made. This includes organisations that use the services of volunteers or people who are self-employed, as well as service providers, voluntary organisations, employment agencies or business contractors, fostering services and regulatory bodies such as Ofsted in the case of childminders.

Child

[2] Working Together Chapter 6 Para.20

[3] Working Together Chapter 6 Para 22

[4] Working Together Appendix 5 Para 12

Refers to anyone who has not yet reached his or her 18th birthday. **Allegation** means any information or concern which suggests an adult who works with children has: • behaved in a way that has harmed, or may have harmed a child • possibly committed a criminal offence against, or related to a child; or • behaved towards a child or children in a way that indicates s/he is unsuitable to work with children The guidance contained within this document refers to the third definition which must be considered within the framework of the procedures for the management of allegations.	

5.Professional Judgement: This document acknowledges that when considering the issue of "unsuitability" a lack of expertise or access to information or advice about thresholds may have a significant impact on the ability to make sound professional judgements. This guidance is intended to offer advice to those who will be making judgements about an adult's behaviour at each and every stage of the process for managing an allegation or concern. Some allegations will contain information about aspects of an adult's behaviour which give rise to concerns about his/her suitability to work with children. It is necessary in these circumstances for the manager, having due regard for the duty to safeguard children, to make a professional judgement about the appropriate action to take. There may also be occasions when an adult's behaviour, either within the workplace, or within the adult's personal life may come to the attention of the employer and give rise to the need for a judgement about the possible impact of that behaviour upon a child or children. A further assessment may need to be carried out in the form of a disciplinary investigation into the alleged behaviour in order to determine whether any action by the employer is required or whether there is a need for a disciplinary hearing. If an internal investigation establishes the need for a disciplinary hearing, the disciplinary panel members must exercise their judgement as to the suitability of the individual to continue to work with children	*This means that when making professional judgements managers should:* • *consult appropriately* • *acknowledge any lack of expertise or information* • *keep an open mind until a conclusion is reached* • *consider other options or alternatives* • *know and act in accordance with the law* • *know and apply appropriate procedures* • *consider appropriate guidance* • *take account of all relevant factors* • *give each factor appropriate weight* *This means that:* • *the employer's decision to carry out a further assessment will be informed by the professional judgement of child protection colleagues* • *disciplinary panel members, in reaching a judgement, should ensure that they consider advice given to them by HR and other staff who are sufficiently experienced and knowledgeable about managing risk and employee rights.*

6. Roles and Responsibilities Every Local Authority has a Designated Officer (LADO) who has responsibility for the oversight and management of allegations and who provides advice and guidance to employers and voluntary organisations. Senior Managers to whom allegations are reported have a responsibility to inform the Local Authority Designated Officer (LADO) of all allegations that come to their attention and which appear to meet the criteria outlined in 4 above. The Senior Manager and LADO will together consider the nature and content of the allegation and the senior manager will be asked to provide any additional information which may be relevant, such as previous concerns or allegations, and whether the child/family have made similar allegations. The discussion will then focus on whether the allegation meets agreed thresholds to hold a strategy meeting under child protection procedures.[5] If the nature of the allegation or concern about an adult's behaviour does not require a strategy meeting under Section 47 a similar meeting should be called to jointly evaluate the level of concern and to determine whether the person's suitability to continue working with children and young people has been called into question. A written record of this discussion and the agreed outcomes should be made by the LADO and shared with the senior manager.	*This means that all senior managers must:* • *be familiar with the role of the LADO* • *have name and contact details of their local LADO* • *be familiar with behaviour which may indicate unsuitability* • *be familiar with the extent of their role and responsibility in managing allegations* • *not undertake any type of 'investigation' under these circumstances until a discussion with the LADO has taken place* • *the discussion should include contributions from the Police, the employer and any other agencies involved with the child* • *appropriate and transparent recording systems should be in place*

7. Threshold for Considering 'Unsuitability' What constitutes unsuitability will vary depending upon the context and nature of the work undertaken. Nationally the government have prescribed criminal behaviours which automatically render individuals unsuitable to work with children and young people. More detailed guidance is available at www.isa-gov.org.uk .	*This means that employers should:* ▪ *ensure that all staff have access to guidance regarding their expected conduct.* ▪ *ensure that the guidance forms part of the recruitment & selection process,*

[5] Section 47 of the Children Act 1989 places a duty on every local authority to make enquiries when it has reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer significant harm.

All employers have a responsibility to set personal and professional boundaries for their staff and to be explicit about what behaviours are unacceptable and will impact on their employment. Senior Managers will need to consider further investigation if they become aware that an individual has: • harmed or may have harmed a child • contravened or continues to contravene any safe practice guidance given by their organisation or regulatory body • exploited or abused a position of power • acted in an irresponsible manner which any reasonable person would find alarming or questionable • demonstrated a failure to understand or appreciate how his/her own actions or those of others could adversely impact upon the safety and well being of a child or young person • demonstrated an inability to make sound professional judgements which safeguard the welfare of children • failed to follow policy or procedures relating to safeguarding and promoting the welfare of children • failed to understand or recognise the need for clear personal and professional boundaries in their work • behaved in a way in his/her personal life which could put children at risk of harm • become the subject of criminal proceedings • become subject to enquiries under local child protection procedures • behaved in a way which undermines the trust and confidence placed in them by their employer If it appears that the behaviour could indicate a potential risk to a child the employer will determine, in consultation with the LADO whether further investigation is necessary. In reaching a judgement, the Senior Manager and LADO in consultation with other professionals as appropriate should specify and record their concerns, clearly indicating why the behaviour may pose a potential risk to a child or young person, prior to the employer initiating a full disciplinary investigation.	*induction and on-going training programmes* ▪ *employers must give consideration to the person's conduct involving or impacting upon a child's welfare outside of employment which has been brought to their attention.* *This means that:* • *the LADO should ensure that all discussions and decisions are recorded and circulated to those present*

8. Employer's Disciplinary Processes **a) Disciplinary Investigation** Those involved in the disciplinary investigation, hearing and any subsequent appeal process must be able to exercise impartial judgement informed by human rights, duty of care, rigorous risk analysis and good employment principles. The balance must be to ensure the welfare of children with whom the adult currently has contact and those with whom contact would be made in the future, and the rights of the employee who is facing potential disciplinary procedures.	

[6] Harding v Hampshire County Council

If the employer agrees that a disciplinary investigation should be undertaken, an investigating officer must be nominated, and timescales agreed with the LADO who will retain overall responsibility to monitor the progress of the investigation and provide advice and support when required or requested.

In most cases, this decision will be based on the nature and seriousness of the behaviour which has been brought to the multi-agency discussion for consideration, and additionally, in those circumstances where a child has made an allegation, upon the child's account of the adult's behaviour. In such cases, it may be necessary to gather further information from the child or other child witnesses to establish the need for an investigation and this should be arranged to be undertaken by a social worker, or other professional experienced in conducting interviews with child witnesses.

The investigating officer usually in partnership with the senior manager should identify the scope of the investigation and should seek to determine the seriousness of the concern and consider to what extent this calls into question the suitability of the individual to continue in their present employment. The employer should consider whether it is appropriate to suspend the individual whilst the investigation takes place.

The officer should approach the investigation on the basis of an objective fact-finding exercise.[6] The process must be robust, well informed and ensure the most rigorous standards for safeguarding children and young people whilst at the same time ensuring the balance of justice and fairness for the employee.

Evidence must be gathered which establishes what has happened. In those cases where a disciplinary investigation follows an initial criminal investigation prior agreement should have been reached that witness statements taken by the Police will be shared with the employer for use in disciplinary processes.

If the criminal investigation results in a charge, it may be necessary for court transcripts to be included within the disciplinary evidence.

When a criminal investigation has not been initiated, and no witness statements are available, advice should be taken from the LADO with regard to obtaining and using child witness statements.

At the conclusion of the investigation, the employer must form a view about whether there are grounds on which the behaviour of the individual has rendered him/her unsuitable

This means that those people making disciplinary decisions must

- *have undertaken appropriate training.*
- *be fully aware of their responsibilities to safeguard children*
- *be familiar with the organisation's disciplinary policies, and expected codes of conduct*

This means that:

- *the investigating officer should, wherever possible, make use of statements taken by police and/or social care under "Achieving Best Evidence" rules at the time the allegation was made.*[7]

[7] Achieving Best Evidence 2001.Dept.Health, Home Office, CPS & Lord Chancellors Office Guidance ensures the interview is conducted in such a way as to: preserve the integrity of the child's evidence by recording it at the earliest reasonable opportunity; reduce the period of the child's involvement in the investigate process; reduce the trauma which the investigative process can inflict on the child through the stress of having to testify before strangers and the defendant about painful events; maintain the defence's right to test the credibility of the child's testimony fully and fairly.

for the position.

The recorded views of the LADO and/or other professionals consulted as part of a strategy discussion/joint evaluation meeting or by the LADO should be taken into account.

Where no case for a hearing has been established the employer should discuss with the LADO what options would be appropriate to support the member of staff and the child or young person concerned where this is appropriate.

b) Disciplinary Hearing

The disciplinary panel members must have regard for all the evidence presented to them and consider whether the person poses a direct risk to children because of their behaviour or whether the person is unsuitable to continue in a position of trust because of any failure to uphold the standards expected of them which safeguard children.

The absence of any criminal investigation, charge or conviction is not an adequate defence for the adult who is the subject of a disciplinary hearing. There may be evidence contained within the disciplinary investigation which suggest a person's standard of behaviour or propriety calls into question his/her suitability to work with children even when

- no criminal activity has been identified; or
- a criminal investigation has not led to a charge; or
- a case has been brought before the court but there is no conviction

and the panel must decide whether the person can be trusted to work with children in their continued employment.

Children should not be expected to attend a disciplinary hearing unless the young person has clearly expressed a wish to contribute by giving evidence in person. In those cases, the young person should be accompanied by a responsible adult and should not be cross-examined by the panel in any way which might cause them undue stress.

The burden of proof in disciplinary proceedings requires that the evidence provided demonstrates that on the balance of probabilities there is a strong likelihood that the individual is unsuitable and/or poses a risk to children.

The panel's decision should not be influenced by concerns about whether the individual may or may not be barred from working with children at a later stage. Neither should concerns about any possible appeal process influence its decision**.**

This means that disciplinary panel members should:

- *always act reasonably and in good faith in the interests of the child and the employee*
- *have had no prior involvement that might prejudice their ability to hear the case fairly*
- *adjourn for further information or advice where necessary*
- *reach a decision based on full consideration of all the evidence with sufficient regard having been given to any explanation offered by the employee for his/her behaviour*
- *understand that the organisation must have a priority to safeguarding children*

9. Record Keeping

Record-keeping is an integral part of all safeguarding processes including those which relate to the management of allegations. Records need to present a complete picture of the events, decisions or actions which they document so it is clear when something happened, how a decision was made and what chain of events led to a particular action.

In dealing with allegations, records should therefore be kept and maintained at every stage of the process thus ensuring that sound decisions are made on full, accurate and up-to-date information and the rationale for those decisions can be traced scrutinised and justified where necessary. Records relating to allegations which have been found to be without substance must also be retained.

A chronology or log of key events, decisions and actions taken should also be maintained to provide a quick overview of progress.

Employers are required to keep all records pertaining to allegations where these involve a child or young person and if concerns arise which relate to the welfare or safety of a child or young person, employers are under a legal obligation to disclose information held on record to police or social care agencies.

The Data Protection Act 1998[8] lays down strict rules on how information about individuals should be managed; personal data must be kept secure and up-to-date and must not be retained for longer than the purpose for which the data was gathered.

Records of allegations, however, must be retained until the subject of the allegation reaches normal retirement age, or 10 years from the date of the allegation if that is longer.[9]

Individuals are entitled to have access to their personal details held as computerised or manual records. However, before sharing any written or verbal information, senior managers should consult with the LADO to discuss when information can be disclosed. Employers have a right to remove personal data about a third party before complying with an access request.[10]

10.Support for Child/Family

Children and families involved in the allegation should be made aware of services that exist locally and nationally

This means that records should:

- *be dated, timed and signed*
- *be written in a formal language that is clear, accurate and factual*
- *not include flippant or inappropriate remarks*
- *clearly differentiate between matters of fact and opinion*

This means that employers should:

- *be familiar with the regulations that govern communications and data*

[8] Data Protection Act 1988 Employment Records Code of Practice and Supplementary Guidance and retention of records

[9] Working Together Appendix 5 Para 9

[10] Information Commissioners Office – www.ico.gov.uk

which can offer support and guidance. They should be provided with any necessary information regarding independent and confidential support, advice or representation. Parents or carers of the child should always be kept informed of the process of an investigation, however, the detail of the information considered by the disciplinary panel and their deliberations cannot normally be disclosed. Parents or carers, and the child where appropriate, should be told the outcome as soon as possible after the decision of the panel has been reached.	

11.Support for Individual Employers have a duty of care to their workers and should act to manage and minimise the stress inherent in the allegations and disciplinary process. Support to the individual is key to fulfilling this duty. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by Social Care or Police. They should be advised to contact their trade union representative, if they have one, and given access to welfare counselling or medical advice where this is provided by the employer. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and in developments occurring in the workplace. Social contact with colleagues and friends should not be precluded except where it is likely to be prejudicial to the gathering and presentation of evidence. Throughout the process the individual should be aware of the concerns and why his/her suitability to work with children is being questioned and given the opportunity to state his/her case. When an employee returns to work following a suspension, or on the conclusion of a case, planned arrangements should be made to facilitate his/her reintegration. This may involve informal counselling, guidance, support, reassurance and help to rebuild confidence in working with children and young people.	*This means that employers should:-* • *Advise the employee to involve his/her trade union representative* • *Name a contact to regularly update the employee about the case* • *Name a contact to keep the employee up to date with work activities* • *Offer or respond to requests for welfare counselling* • *Ensure that documents are explained orally where the individual has difficulty reading or where English is not his/her first language* • *Support the employee upon return to work following suspension*

12.Referral to DCSF Safeguarding Children Operations Unit / Independent Safeguarding Authority	

If at the conclusion of the disciplinary process the organisation ceases to use the person's services because it considers that the person is unsuitable to work with children the employer is required to supply information to the Department for Children Schools and Families / Independent Safeguarding Authority. The organisation is similarly required to supply information about the disciplinary process if the person resigns (or withdraws their voluntary services) before the process has been completed. It will therefore be necessary, in those cases for the disciplinary investigation to continue, and if a case for a disciplinary hearing is established, for the panel to convene and reach a decision about what disciplinary sanction would have been imposed had the person not ceased to provide their services or whether, in the case of a volunteer, the organisation would have discontinued to use their services. It is important that full information about the behaviour of the adult and how the judgement of the panel was informed is given to the Department. A referral form giving these details, with attached notes of meetings and details gained from the disciplinary investigation, should be completed and sent to the Safeguarding Children Operations Unit. (attached at Appendix 2) The Secretary of State will consider the information supplied and reach a decision about whether to include the person's name on a list that prevents or places restrictions upon the person working with children. Before reaching a decision, the Secretary of State will seek to offer the individual the opportunity to put forward his/her own account and make available all the information which has been given to the Department for consideration.	*This means that in the employees absence the employer should:* • *continue to reach a decision about the person's suitability to work with children in their organisation and to convey that decision, and the reasons for it, to the DCSF.* *This means that the employer, in consultation with the LADO should* • *ensure that any confidential information relating to the child or the family is not contained within the information sent to the Department*

Appendix 1 – Examples of Unsuitable Behaviour

Teacher A	• Is aware that the school has an 'open door policy' and staff should not spend time alone in a room with a pupil. A

	member of staff is concerned by his colleague's action of inviting a Year 10 pupil into an office and locking the door.
Football Coach B	• insists that any member of the team who arrives late for practice runs around the pitch in his underwear for a number of times equivalent to the minutes late.
Social Worker C	• regularly arranges to meet a 14 year old service user in a Public House.
Volunteer D	• takes money and small gifts from a 50 year old friend into a Young Offenders Unit and passes them on, in secret, to a 15 year old.
Youth Worker E	• encourages a small group of 14/15 year old children to talk about their sexual fantasies at lunch time gatherings in her room at school.
Learning Mentor F	• offers to pay 15 and 16 year old boys to help with some household chores and offers to increase the rate of payment if they undertake the tasks in their underwear.

department for
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Referral to Children's Safeguarding Operations Unit (CSOU) for inclusion on Protection of Children List (POCA) or List 99

C O N F I DE N T I A L

The Secretary of State has powers under the Protection of Children Act 1999 to prevent individuals from working with children and young people. Child care organisation have a statutory duty to refer (and any other organisations have a power to refer)where an individual is dismissed for misconduct which harmed a child or placed a child at risk or harm; or resigns, retires, is made redundant or is transferred to a position which is not a child care position in such circumstances.

The Secretary of State has powers under the Education Act 2002, to prevent individuals working with children and young people. Relevant employers and agents have a statutory duty to refer individuals to the Department for consideration by the Secretary of State if they are dismissed for misconduct, unsuitability to work with children or on health grounds (where an issue concerning the safety or welfare of children is raised) or resign in circumstances where such a dismissal may otherwise have been considered.

When referring an individual to the Department, please ensure that all relevant documents are enclosed to avoid unnecessary delay. Please note that the referred individual is likely to see any information that you share with us.

October 2007

1. **Details of Adult referred to CSOU**	Surname	Date of Birth
	Title	N.I. Number
	First Name	DCSF Registration No. (where applicable)
	Any known previous or other name:	Contact Details Tel: Mobile:
	Current Address	Any known previous address:

2. **Employer[11] or Referring Agency**	Name of Employer/Referring Agency	Address:
First contact	Name Position	Contact details
Second Contact	Name Position	Contact details

3. **Current**	*Please indicate the whereabouts of the person concerned, if known, and their employment status, e.g. whether they have resigned, been suspended, dismissed or retired.*

[11] The body which contracts or provides the paid or unpaid services of an individual regardless of whether this arrangement has been specified as a contractual arrangement

Situation	*Please enclose any copies of dismissal /suspension /resignation letters or copy of compromise agreements and any other relevant details.*

4. **Reason for Referral**	Behaviour deemed to pose risk to child – Yes /No *Details:*
	Other reason – Yes/No *Details:*

5. **Employment details of adult being referred to CSOU**	a) Position held and length of time in current post:

	Please attach copy of job description, application form and references
	b) Any previous positions held with current employer:
	c) Details of any induction or training programmes *Please provide copies of any training programme where possible*
	d) Details of any guidance given about behaviour or code of conduct *Please provide any documents signed by employee (e.g. Guidance for Safe Practice document or agreed code of conduct)*
	e) Details of any past disciplinary action taken whilst within organisation *Please attach copies of any documentation*

6. **Police Involvement**	a)Outcome of any police investigation: *Please attach any available police reports*

	b) Dates
	c) Police Contact Details:

7. **Social Care Involvement**	a) Outcome of any Social Care enquiries: *Please attach any available documents relating to Section 47 enquiries*
	b) Dates
	c) Social Care Contact Details:

8. **Other Agencies Involved**	*Please give details and contact numbers*

9. **Details and outcomes of strategy meetings**	a) Dates of all strategy meetings
	b) Decisions and outcomes

	Please attach details of all strategy meetings taking care to omit details referring to the child or family.

10. **Disciplinary action in relation to current situation**	a) dates	
	b) Details of process and outcome *Please attach copies of documentation*	
	c) Is an appeal pending? Yes/No *(If yes please give details)*	

11 **Trade Union or Association representatives**	Name:	Address:
		Telephone Contact:

12. **Witness Statements** ***Please list all witness statements attached which should include any statements made by the adult referred to CSOU. All witness statements must be signed and dated***	Name	Date of Statement

13. **Other relevant information**	*Please indicate if other reports are attached*

14. **Chronology of significant events attached**	Yes *A chronology is a simple, brief record of the action and communication undertaken by the referring agency from the time the matter was first reported.* *See example in Appendix A*	No (please explain)

15. **Summary of any risk to a child or young person**	*Please provide summary information in relation to this referral indicating why the individual is considered to be a risk to children and/or why the person is considered unsuitable for this area of work:*

Referral Submitted by:
Print Name:
Address:
Contact Telephone Number:
Fax:
Email:
Date of Referral

Once completed this form and related documents should be marked as confidential and sent either to:

Children's Safeguarding Operations Unit (POCA)

or

Children's Safeguarding Operations Unit (List 99)

DCSF, Area E, Ground Floor,
Mowden Hall, Staindrop Road, Darlington DL3 9BG

*Email **TSM.Casework@dcsf.gsi.gov.uk***

Appendix A

Example of Chronology

Chronology of Significant Events re (insert name)

Only one or two lines are necessary. This chronology should not include details but simply provide an overview of all that has happened since the concerns was raised with the referring agency. This allows the reader to quickly ascertain how key events have unfolded.

Date	Action or Communication	Initials
04.04.07	Phone call from xx advising that member of staff had been arrested on charge of xx. Asked for further clarification	
04.04.07	Email received from xx with further details Discussed situation with LADO Advised Director	
05.04.07	Phone call from xx in Social Care who advised strategy meeting to take place on 06.07.07	
05.04.07	Discussion with xx regarding Mr. xxx	
05.04.07	Email to Director to update	
06.04.07	Strategy meeting. Decision to xxxx	

07.04.07	Press coverage of incident in Evening Post	
08.04.07	Discussion with Press Officer re maintaining confidentiality	
Chronology continues until end of process		