Power and positions of trust: Guidance on the code of conduct for staff working

Jenni Whitehead analyses some of the most relevant sections of 'Guidance for Safer Working Practice for Adults who work with Children and Young People in Education Settings' (2009) and outlines how schools can use these statements and paragraphs to protect both staff and pupils

This document, while not statutory guidance, was originally commissioned by the government in 2006 and was last updated in 2009. Following the Nigel Leat (Somerset) case, minister Tim Loughton stated that all schools should read the serious case review and should use this guidance to draw up their own codes of conduct.

**Overarching statement**

*A relationship between an adult and a child or young person is not a relationship between equals. As a result of their knowledge, position and/or the authority invested in their role, all adults working in education settings are in positions of trust in relation to the young people in their care. Broadly speaking, a relationship of trust can be described as one in which one party is in a position of power or influence over the other by virtue of their work or the nature of their activity. It is vital for all those in positions of trust to understand the power this can give them over those they care for and the responsibility they must exercise as a consequence of this relationship. There is potential for exploitation and harm of vulnerable young people. Adults therefore have a responsibility to ensure that an unequal balance of power is not used for personal advantage or gratification.)*

This is a strong opening statement and makes it clear from the start that the school recognises that the potential for the abuse of an adult’s power exists.

**The legal position**

*Where a person aged 18 or over is in a specified position of trust with a child under 18, it is an offence for that person to engage in sexual activity with or in the presence of that child, or to cause or incite that child to engage in or watch sexual activity.)*

This offence comes under the Sexual Offences Act 2003 and staff, particularly those working in second level education, need to properly understand the law. This offence has nothing to do with the legal age of consent, it deals specifically with the abuse of a position of trust and this means that whether the young person consented is not the issue that determines whether the offence is proved and where it is shown that a young person did consent to the relationship this does not detract from the seriousness of the offence.

The legal definition of a child is a person under the age of 18 and all staff must be made aware of this. If convicted of this offence a person is likely to serve a custodial sentence and have their name added to the sex offender register.
The guidance also makes clear that allowing or encouraging a relationship to develop in a way which might lead to a sexual relationship is unacceptable and that, 'intimate or sexual relationships between children/young people and the adults who work with them will be regarded as a grave breach of trust [...] and will always be a matter for disciplinary action'.

The sexual activity referred to does not just involve physical contact including penetrative and non-penetrative acts, it may also include non-contact activities, such as causing children to engage in or watch sexual activity or the production of pornographic material. This description of sexual activity includes the sending of explicit sexual images, emails and texts.

**Maintaining professional boundaries**

‘All adults should clearly understand the need to maintain appropriate boundaries in their contacts with pupils. Adults should always maintain appropriate professional boundaries and avoid behaviour which might be misinterpreted by others. They should report and record any incident with this potential.’

The guidance includes specific sections (see below) that look in more detail at where and how professional boundaries may become blurred. There are some very important messages here that need addressing within the induction process for all staff.

Presumptions that these issues are a matter of common sense should be rigidly avoided.

**Gifts and rewards**

Schools should have a clear written policy and guidance on rewards, including arrangements for the declaration of gifts received and given and all staff must be made aware of such within their induction process.

‘The giving of gifts or rewards to pupils should be part of an agreed policy for supporting positive behaviour or recognising particular achievements. In some situations, the giving of gifts as rewards may be accepted practice for a group of children, whilst in other situations the giving of a gift to an individual child or young person will be part of an agreed plan, recorded and discussed with senior manager and the parent or carer’.

The guidance does acknowledge that there may be specific occasions when a member of staff may consider it appropriate to give a child a small personal gift of insignificant value but this should only happen with the agreement of the head teacher and parent or carer.

If gifts are given it should be done openly and not based on favouritism. As the guidance says 'Adults need to be aware however, that the giving of gifts can be misinterpreted by others as a gesture either to bribe or ‘groom’ a young person.'

The receiving of gifts is also an issue to be addressed and staff must not accept any gift that might be construed as a bribe by others, or lead the giver to expect preferential treatment. It is fashionable now for parents to buy ‘thank you’ cards and gifts for teachers at the end of the academic year and it is recognised that teachers could cause offence by not accepting them.
Favouritism

'Staff should exercise care when selecting pupils for school teams, productions, trips and/or specific work tasks in order to avoid perceptions of favouritism or injustice. Similar care should be exercised when pupils are excluded from an activity. Methods of selection and exclusion should always be subject to clear, agreed criteria'.

While the paragraph above puts emphasis on avoiding favouritism, it is equally important to acknowledge that exclusion from activity can be used as a form of humiliation and abuse.

The use of personal living space

This section in the guidance advises that staff should not work with pupils in their own home or living space unless the reason for this has been established with the head teacher and parent/carer. It also states that it is unreasonable for schools to expect staff to use their own home for work with pupils; ‘Under no circumstances should pupils assist with chores or tasks in the home of an adult who works with them. Neither should they be asked to do so by friends or family of that adult.’

Social contact

‘Adults should not establish or seek to establish social contact with pupils for the purpose of securing a friendship or to pursue or strengthen a relationship. If a pupil or parent seeks to establish social contact, or if this occurs coincidentally, the member of staff should exercise her/his professional judgement in making a response. There will be occasions when there are social contacts between pupils and staff, where for example the parent and teacher are part of the same social circle. These contacts however, will be easily recognised and openly acknowledged.’

The guidance recognises that staff sometimes support parents who are in particular difficulty, for example escorting children into school when a parent is ill, but warns that care needs to be exercised as the parent may come to depend upon the member of staff outside their professional role. Where this happens the staff member is expected to discuss the issue with senior management.

Members of staff may come into contact with pupils in social settings such as pubs and clubs and it is important that staff recognise that their professional role does not just finish at the school gate. This is not to say that staff must ignore pupils in social settings but they should be mindful of how their behaviour towards pupils in such settings may be interpreted.

Communication with pupils (including the use of technology)

Most of our new to work teachers are of an age whereby they have grown up with new and emerging technologies. The use of smart phones means that access to the internet and social networking sites is available whenever and wherever we are. It is important to establish clear guidelines about the use of new technologies in the workplace. Do not presume that all staff recognise the potential risks of making contact with pupils over social networking sites. Acceptable use policies (AUP) are now common place with students and they are equally important in respect of staff.
Most children will search to see if their teacher has a social networking account such as Facebook and may attempt to contact them through this. Teachers need to use their professional judgement in dealing with such contacts and where necessary explain to the pupil that they will not respond to friend requests from them as they are their teacher not their friend. Where children do attempt to make contact through social network working sites staff should discuss the matter with the senior management team.

Schools and colleges use new technologies on a daily basis to support and enhance the curriculum and many schools use internal email systems to communicate with pupils and their parents, however new technologies should never be used to start or encourage a friendship or relationship with a pupil.

The AUP for school based staff should be part of the induction process and may include the following:

- Adults should not share any personal information with a child or young person.
- They should not request, or respond to, any personal information from the child/young person, other than that which might be appropriate as part of their professional role.
- Adults should ensure that all communications are transparent and open to scrutiny.
- Adults should also be circumspect in their communications with children so as to avoid any possible misinterpretation of their motives or any behaviour which could be construed as grooming.
- They should not give their personal contact details to pupils including email, home or mobile telephone numbers, unless the need to do so is agreed with senior management and parents/carers.
- Email or text communications between an adult and a child young person outside agreed protocols may lead to disciplinary and/or criminal investigations.
- They should ensure that personal social networking sites are set at private and pupils are never listed as approved contacts.

**Infatuations**

‘Occasionally, a child or young person may develop an infatuation with an adult who works with them. These adults should deal with these situations sensitively and appropriately to maintain the dignity and safety of all concerned. They should remain aware, however, that such infatuations carry a high risk of words or actions being misinterpreted and should therefore make every effort to ensure that their own behaviour is above reproach.’

As part of the induction process all new staff need to be offered guidance on coping with ‘crushes’ and infatuations both in respect of themselves and in respect of colleagues. All staff but particularly new staff need to be told as part of their induction that they should report to senior managers any concerns in respect of infatuations and crushes. These reports should be recorded and kept securely.

**Grooming**

‘All staff should be made aware that a person intent on sexual abuse of children will, groom children and the adults around them to ensure that they can carry out their abusive behaviour and to ensure
that they do not raise anybody’s suspicion or that they make other people scared to blow the whistle.’

Some of the behaviours described above have been employed by sex offenders to cover up or to explain away their behaviour. It is important that staff do not behave in a way that could be misinterpreted, leaving themselves open to suspicion. Equally important is that where staff have concerns about the behaviour of a colleague they bring this to the attention of the leadership team as soon as possible.

In the event that the concerns are about the head teacher, staff need to know that they should report their concerns to the chair of governors.

*Jenni Whitehead has worked with and on behalf of children and young people for over 30 years; she is presently employed by Education Bradford as their Lead Officer Child Protection*