Policy and procedures

Allegations against people in positions of trust
(PiPOT)

April 2017 version

www.cornwall.gov.uk/safeguardingadults
(This page has been left blank intentionally)
Contents

1. Introduction
2. Glossary
3. Scope
4. Identifying concerns
5. When adult safeguarding enquiries must be undertaken
6. Roles and responsibilities
7. Information sharing and confidentiality
8. Support for the person in a position of trust
9. Procedures

Appendices

1. The employer or student body risk management arrangements
2. Questions to assist in decision making regarding disclosure
3. Professional Regulatory Bodies
4. The Disclosure and Barring Service (DBS)
1. Introduction

The Care Act 2014 requires Safeguarding Adult Boards (SABs) to establish and approve a framework and process for member organisations of the SAB to respond to allegations and issues of concern that are raised about a person who may have harmed, or who may pose a risk, to adults at risk.

These procedures are to be used when allegations are made against people who work with adults at risk in a paid or voluntary capacity, or there are issues of concern about reported harmful behaviour which cast doubt on the Person’s suitability to work with adults at risk. This includes students who are working with adults at risk, and personal assistants employed under direct payments.

These procedures are designed to ensure that if allegations of abuse are made, or there is any concern, appropriate and proportionate enquiries are made so that adults at risk are protected and public confidence in services maintained.

For the purpose of this guidance, employees, volunteers or students (paid or unpaid) will be referred to as a ‘person in a position of trust’, or Person. The term ‘employer’ will be used to refer to organisations that have a working relationship with the ‘person in a position of trust’. This includes organisations that use volunteers. It also includes adults with care and support needs who employ Personal Assistants (PAs).

2. Glossary

Coordinating Manager - professional responsible for coordinating safeguarding Enquiries regarding allegations of adult abuse

CloS SAB – Cornwall and Isles of Scilly Safeguarding Adults Board

CQC - Care Quality Commission – Regulator of Health and Social Care Services

DBS - Disclosure and Barring Service. This is the organisation which will deal with Criminal Record Checks and referrals about staff
LADO - Local Authority Designated Officer- Person in Children's Services who receives concerns regarding a person in a position of trust who works with children.

Monitoring Log – held by the local authority adult safeguarding Service Manager with access locked down to the local authority adult safeguarding service. The log tracks activity from receipt of an allegation/concern about a person in a position of trust to case closure.

Person - Person in Position of Trust

Service Manager – the local authority adult safeguarding service manager


3.1 These procedures and guidance apply to all who work, in either a paid or unpaid capacity, with adults who can be at risk of abuse or neglect. It also applies to students who are working with adults at risk. A member of staff or volunteer is considered to be in a “position of trust”. Any allegation against them or concern about harmful behaviour towards adults and/or children, either in employment or in their personal life, must be carefully considered. These concerns may be current, or historical.

3.2 This guidance does not apply if the allegations or concerns involve the Person’s suitability to work with children. If the Person is working with children a referral must be made without delay to the Local Authority Designated Officer (LADO).

Contact details;

- Cornwall – 01872 326536
- Isles of Scilly – 02076 416108

3.3 If the Person is working with both children and adults the LADO and the local authority Adult Safeguarding Service Manager will work together to monitor the concern. People who pose a risk to children may also pose a risk to adults, and vice versa. The LADO and local authority Adult Safeguarding Service Manager will work closely together to identify risks across both adults and children’s services.

3.4 Where a concern has been raised about a Person, who is currently employed, volunteering or on a student placement in another local authority area, information must be shared with the Adult Safeguarding Lead Officer for that local authority area.
If there is also a risk to children, the relevant LADO must also be informed and the Cornwall Council LADO notified.

4. Identifying concerns

4.1 Concerns may be identified and brought to the attention of the local authority Adult Safeguarding Service Manager by the Person’s employer, the police, a social worker or other professional, an adult at risk, complainant, whistleblower or member of the public. Concerns may come to light via a child protection investigation, a complaint, a quality assurance visit or provider alerting commissioners of services, or any other source of disclosure. All agencies who work, or are in contact with, adults at risk must comply with this policy and procedures. Concerns must be reported to the local authority Adult Safeguarding Service Manager within one working day of identification or disclosure.

4.2 Concerns may arise in connection with:

4.2.1 The Person’s paid work, student placement or volunteer activity with Adults. A worker, student or volunteer has been alleged to have abused or neglected an adult at risk connected to their place of work. These concerns will also lead to an enquiry under adult safeguarding procedures.

4.2.2 The Person’s life outside work i.e. concerning adults or children in their family, social circle or community.

The Person may have:

- behaved in a way that has harmed, or may have harmed, an adult or child
- committed a criminal offence against, or related to, any adult or child
- behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs
- behaved in a way that casts doubt on their suitability to work with adults at risk, for example been arrested or convicted of drug or alcohol or violence related offences

Examples:

Accusations of assault or abuse of a family member.
Children removed from the care of the Person following concerns regarding abuse or neglect

Criminal convictions including assault, theft/fraud, alcohol/drug/violence related offences including those related to domestic abuse.

4.3 All allegations and concerns, whether they arise within or outside of the Person’s workplace, must be reported to the local authority adult safeguarding Service Manager, without delay, within the timescale of one working day of identification or disclosure of the concern.

4.4 If allegations arise within the Person’s workplace the employer will be informed if they do not already know and, in addition to action the employer must take, an Adult Safeguarding Enquiry may be considered to ascertain the need for a safeguarding plan to address the safety and well-being of the adult(s) at risk.

4.5 Concerns which arise from the Person’s behaviour outside of the workplace must also be reported to the local authority. The local authority should give “careful consideration to what information should be shared with employers (or student body or voluntary organisation) to enable risk assessment”. (Care Act 2014 chapter 14.125)

4.6 Historical concerns. Where concerns about an abuse of position of trust relate to historical abuse it is important to ascertain if the person is currently working with adults at risk or children and if that is the case, to consider whether the current employer should be informed.

A historical allegation of child abuse must be referred to children’s services. This may also become an adult abuse of position of trust concern if the alleged person causing harm currently works with or has contact with adults at risk.

A historical allegation of adult abuse must be referred to the area where the abuse occurred. This may also become an adult abuse of position of trust concern if the alleged person causing harm currently works with or has contact with adults at risk.

5. When Adult Safeguarding Enquiries should be undertaken.

5.1 Local authorities must make enquiries, or cause another agency to do so, whenever abuse or neglect are suspected in relation to an adult at risk, and the local
authority thinks it necessary to enable it to decide what (if any) action is needed to help and protect the adult.

If an adult at risk has allegedly been harmed or neglected by a Person in a position of trust an adult safeguarding enquiry must be carried out. Other processes, including police criminal investigation or employer's disciplinary processes, will also be considered. All risk assessments and subsequent actions must be carefully coordinated and take account of the well-being and safety of the adult at risk.

5.2 If no adult at risk has been harmed adult safeguarding processes are not required.
6. Roles and Responsibilities

6.1 The Local Authority Adult Safeguarding Service Manager is responsible for keeping a secure and confidential record, and monitoring the progress of, all cases where there has been a concern expressed or allegation about a person in a position of trust. The record will include details of the person referring, the Person’s details, the concern, how the concern was followed up and resolved, the decisions reached and the action taken. The record will be closed once all actions agreed have been taken, including if necessary referral to DBS and the abuse of position of trust case is closed.

6.1.2 The local authority Adult Safeguarding Service Manager is responsible for the risk assessment regarding information sharing for the purposes of disclosure. If the employer is not aware of the concern the Service Manager must ascertain whether the conditions for disclosure are met, i.e. Does the Person work in a setting where there are or are likely to be adults at risk? Does the concern expressed indicate there may be a risk to adults? In making the decision the Service Manager must adhere to the following principles as stated within the Care Act statutory guidance (December 2016)

Decisions on sharing information must be justifiable and proportionate, based on the potential or actual harm to adults or children at risk and the rationale for decision-making should always be recorded. (14.131)

When sharing information about adults, children and young people at risk between agencies it should only be shared:

- where relevant and necessary, not simply all the information held
- with the relevant people who need all or some of the information
- when there is a specific need for the information to be shared at that time (14.132)

The Service Manager may need to check the employee’s work position with an employer but will not be able to share any further detail if the employee has no contact with adults at risk.

See Appendix 2 for further detail.
6.1.3 Once a decision has been made regarding disclosure, the local authority Adult Safeguarding Service Manager is responsible for ensuring liaison has taken place with:

- The police to determine whether a criminal investigation is indicated
- The LADO if children or young people are at risk
- The employer or student body, including the agency adult safeguarding lead
- Other local authorities as necessary
- CQC and commissioners

The Service Manager will discuss and plan next steps with the adult safeguarding agency lead, and other relevant managers. The oversight of the Service Manager will ensure independent scrutiny of any subsequent action.

6.1.4 If the Person works for the NHS, the Clinical Commissioning Group Adult Safeguarding Lead Officer must be informed, alternatively if the person works for the Police, the Police Adult Safeguarding Lead Officer must be informed.

6.1.5 Where the concerns involve a person working in a commissioned service, information should be shared with the relevant CCG commissioners and quality assurance/service improvement team. This can be undertaken by the employer or by the local authority Adult Safeguarding Service Manager if necessary. After the abuse of position of trust procedures have been followed, commissioning/quality assurance teams may take action as deemed appropriate to ensure the service has appropriate standards of practice to prevent, and respond to, any future risk of harm. For example, there may have been a failure to follow safe recruitment procedures.

6.1.6 CQC must be notified if the Person has harmed an adult in the workplace and is working in a regulated service. If the employer is undertaking a risk assessment as a result of concerns disclosed relating to the Person's personal life outside of work, CQC do not need to be notified but will examine the steps taken as part of an inspection. CQC can take action as deemed appropriate within their own procedures including assessment of ‘fitness’ to practise and the employer’s responsibility to safeguard adults at risk.

6.1.7 Concerns about a Person who works for Cornwall Council must be dealt with in the same way as all other agencies and notified to the Adult Safeguarding Service
Manager without delay. The Service Manager will open a monitoring record and liaise with the responsible manager and Human Resources manager to support them through the abuse of position of trust process.

6.1.8 If necessary, the local authority Adult Safeguarding Service Manager will either undertake a discussion with the relevant managers and professionals or, in complex situations, may convene an allegations of abuse of position of trust meeting to assess and determine the actions required to manage the risk posed by a ‘person in a position of trust’. These meetings may need to include the Employer or Student Body, Care Quality Commission, the Local Authority Designated Officer (LADO), commissioning, contracts, police and other relevant parties, as appropriate.

6.1.9 The local authority Adult Safeguarding Service Manager may also make referrals to a regulatory body or to DBS where the relevant criteria has been met, if the employer has not made a referral and it is necessary to ensure an appropriate referral has been made. CQC will be informed that this action has been necessary.

6.1.10 Staff who are undertaking adult safeguarding enquiries where adult safeguarding concerns have also been expressed will be advised and supported by the local authority adult safeguarding team. The CFT adult safeguarding team will also undertake this role within its own organisation.

6.1.11 The Local Authority Adult Safeguarding Service Manager will provide regular anonymised monitoring reports to the CioS Safeguarding Adults Board on abuse of position of trust activity each quarter.

6.2 The Police will actively identify Persons who have behaved in a way that has or may harm adults at risk or creates concern about their suitability to work with adults at risk. The police will report these concerns to the local authority Adult Safeguarding Service Manager as well as reporting specific concerns about adult abuse via the adult safeguarding referral route once a disclosure decision has been made by the local authority Service Manager, the details of the concern will be disclosed to the employer via the agreed mechanism. In addition, if agreed within an allegation of abuse of positions of trust discussion or meeting, the police may share information with employers gathered during any criminal investigation, so they can make informed decisions to protect adults at risk of abuse and harm.
6.3 **Employers and student bodies** once aware of an allegation or concern regarding a Person the employer/student body must report the action it is taking to the local authority Adult Safeguarding Service Manager and provide evidence as required. The role of the Service Manager is to ensure that the employer/student body has appropriately assessed and responded to the presenting risk. If the Service Manager is not satisfied by the employer’s response a number of options can be considered:

- Advice to the employer as to concerns about the assessment/response to the presenting risk with a timescale agreed for remedy.
- Notification to the relevant regulatory bodies and commissioners and discussion of actions needed.

The local authority Adult Safeguarding Service Manager will also convene a meeting under adult safeguarding procedures if it is possible that adults are placed at risk by the employer’s failure to address concerns.

Employers should consider notifying the relevant professional body for an interim suspension order in urgent circumstances

6.3.1 Employers and student bodies must be responsible for assessing the risk in the context of their service. Only the employer has the power to suspend an employee, redeploy them or make other changes to their working arrangements, and so must be responsible and accountable for the decision reached. Similarly, only student bodies can change the terms of their arrangements with students.

6.3.2 People who employ their own personal assistants have the same powers as larger employers, only they can suspend or dismiss an employee. This may be very stressful for the employer if they have been harmed or are fearful of the Person. Support measures must be identified and offered to these employers.

6.3.3 Each organisation will have policies and procedures in place in relation to employees and volunteers and these will be their primary source of guidance. The employer/student body risk management arrangements (*appendix 1*) should be read alongside each organisation’s own policies and procedures to assist good practice in decision making. It must not be used as a substitute for the organisation’s own policies and procedures. Whilst the local authority adult safeguarding service may
provide support, the risk management arrangements are the responsibility of the employer/student body, taking into account their assessment of the risk, their own internal policies and procedures, and employment law. The local authority Service Manager should be provided with an assurance of how the risk is being managed, including a copy of the risk management plan if requested.

6.4 Teams undertaking adult safeguarding enquiries where a Person has allegedly abused a position of trust is involved:

When an adult has allegedly been abused by a person in a position of trust enquiries under section 42 of the Care Act may well be necessary in order to:

- establish facts
- ascertain the adult’s views and wishes
- assess the needs of the adult for protection, support and redress and how they might be met
- protect from the abuse and neglect, in accordance with the wishes of the adult
- make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect
- enable the adult to achieve resolution and recovery

Investigations by employer’s form part of the enquiry, and in some cases may be the only enquiry. The terms of disciplinary investigations are the responsibility of the employer, but should be shared with the adult safeguarding coordinating manager to ensure that all issues of concern are being addressed within the disciplinary process.

6.4.1 The coordinating manager for the adult safeguarding enquiry must contact the local authority Adult Safeguarding Service Manager before the terms for any enquiry are agreed. The coordinating manager must seek advice and support as needed and keep the local authority Adult Safeguarding Service Manager updated as to the adult safeguarding case progress and conclusion.

6.4.2 The coordinating manager must work closely with the Person’s employer in the safeguarding process so that the employer can take appropriate action in line with their own procedures, and carry out appropriate risk management and employment procedures, including referrals to DBS and other registration bodies. The
coordinating manager must feedback the above actions to the local authority Adult Safeguarding Service Manager.

6.4.3 The coordinating manager must inform the Quality Assurance and Service Improvement team if the employer is a contracted service and involve them in the safeguarding process as appropriate.

6.4.4 The coordinating manager must inform the local authority Adult Safeguarding Service Manager when adult safeguarding procedures have concluded. The local authority adult safeguarding service will continue to monitor the abuse of position of trust process.

6.5 The local authority Quality Assurance and Service Improvement team will:

6.5.1 Ensure that services commissioned by Cornwall Council do the following:

- take appropriate action in line with their own procedures, particularly disciplinary procedures, to ensure adults at risk are protected from abuse and harm
- carry out appropriate risk management and employment procedures – including referrals to DBS and other registration bodies
- keep the local authority Service Manager updated

6.5.2 The quality assurance and service improvement team will monitor appropriate procedures are completed and regularly update the Service Manager until the case is concluded.

6.6 The Children’s Services LADO will inform the local authority Adult Safeguarding Service Manager of any Person’s referred to them who may also pose a risk to adults at risk. The LADO will work closely with the local authority Adult Safeguarding Service Manager when a Person pose a risk to both adults and children.

7. Information sharing and confidentiality

7.1 Guiding principles: “Decisions on sharing information must be justifiable and proportionate, based on the potential or actual harm to adults or children at risk and the rationale for decision-making should always be recorded. Care Act 2014 chapter 14.131”
The Safeguarding Adults Board information sharing procedure should be referred to when making decisions to share information. Additional legal advice may occasionally be required.

Information about adults, children and young people at risk between agencies, it should only be shared:

- where relevant and necessary.
- with the relevant people who needs some or all of the information
- when there is a specific need for the information to be shared at that time

The Data Protection act 1998 permits the processing of data to protect the vital interests of the data subject or others, e.g. adults at risk; in addition, the Crime and Disorder Act 1998 allows the sharing of information for the purposes of the reduction or prevention of crime and disorder.

Any information shared should be limited to convey the nature of the risk. It should be made very clear whether the information is an allegation or a substantiated concern, and any current process in relation to its investigation.

7.2 In situations where there are allegations or concerns relating to the behaviour of a ‘person in a position of trust’ during their work, the employer must be informed if they are not already aware.

7.3 An allegation regarding a Person in their place of work may well also be subject to an adult safeguarding enquiry. In this case, any adult at risk involved and/or their representative, should be supported to understand the process and kept informed about the progress of the concern including any outcome. If the adult does not have mental capacity to make decisions in relation to the enquiry, or has other significant difficulties in understanding the process and has no one to represent them, an advocate must be appointed. The adult or their representative can be made aware of the general outcome of the disciplinary process as it relates to their own wellbeing, for example the Person is not returning to the workplace, or that the Person is returning. If a member of staff or volunteer is returning to work with adults at risk attention must be paid to the impact on adults, and consideration as to whether the Person and the adult will or should have contact, and whether a meeting between
both as part of a restorative process is acceptable and helpful to the adult. Whilst an adult or their representative should be made aware of the general outcome as it applies to them of any disciplinary process they cannot have access to details of hearings etc. to preserve the confidentiality of the Person involved.

7.4 In circumstances where the concerns have arisen from the person’s personal or private life, or in another work setting, and the current employer is unaware, “the decision to share information with an employer/student body must be justifiable and proportionate, based on the potential or actual harm to adults at risk. The rationale for decision-making should be recorded”. (Care Act statutory guidance 14.131)

In deciding whether the information should be shared, it is necessary to consider the key question of ‘whether the person has behaved or may have behaved, in a way that means their suitability to undertake their current role or to provide a service to adults with care and support needs should be reviewed’.

The following factors should be considered, but are not exhaustive:

1. Does the person work in a setting where there are or are likely to be adults at risk?
2. What type of access to adults does the person have?
3. How frequently does the individual have access to adults at risk?
4. What is the severity of the allegation?
5. What would the impact be on an adult at risk if harm were to occur?
6. Likelihood of recurrence
7. Does the incident relate to them as a victim or perpetrator?

See appendix 2 Risk Assessment and Disclosure for further details

7.5 Unless it puts the adult at risk or a child in danger, the Person should be informed that the allegation against them will be shared with their employer or academic institution. If a professional has referred the concern to the local authority, they should tell the Person that they are referring. The grounds for not doing so would be that telling the Person would:
- Put an adult at risk or child in danger
- There is a risk the Person will self-harm
- There is a risk to the professional who is telling the Person they are making a disclosure.

Details of the risk and why the person has not been told about the disclosure must be recorded.

The Person’s consent should be sought to share information, after advising them what information will be shared, how and who with.

7.6 The local authority Adult Safeguarding Service Manager should make the decision as to whether disclosure to the employer should take place or not. The rationale for this decision must be recorded.

7.7 Wherever possible, if disclosure is to take place the local authority Adult Safeguarding Service Manager must ensure that the Person has an opportunity to inform their employer/student body themselves. There may however be some occasions where the immediacy and nature of the risk does not allow for this. The Service Manager will need to ensure that the appropriate information has been shared with the employing or academic organisation to enable them to assess risk, and take action under these procedures.

7.8 Confidentiality. Information should be restricted to those who have a need to know in order to protect adults at risk or children, facilitate enquiries, or manage related disciplinary or suitability processes. The local authority Adult Safeguarding Service Manager will ensure that all personal information is restricted to the local authority safeguarding service and to the relevant personnel who are conducting enquiries or undertaking disciplinary investigations. The Service Manager will be responsible for a record of the concern and for monitoring any criminal or employer led investigation or adult safeguarding Enquiry until its conclusion.

7.9 When the concern is subject to an adult safeguarding Enquiry or plan it will be necessary to enter details of the concern onto the local authority recording system in order to:

- carry out an effective adult safeguarding intervention;
- record the experience, outcomes and thoughts of the adult at risk,
• record the impact of any substantiated harm on the life of the adult at risk.

The record will record the role of the Person, but not the name, gender or work address or other identifying details. The record will contain advice to contact the Adult Safeguarding service for further information if needed. The local authority Adult Safeguarding Service Manager will assess the need for the Person’s personal data to be shared in order to protect an adult at risk, or children, at the point of the request.

8. Support for the ‘Person in a position of trust’

8.1 Where concerns have been raised that a ‘Person in a position of trust’ may pose a risk to people with care and support needs, the experience is likely to be very stressful for them. Alongside the duty of care towards the adult at risk, there must be a duty of care to the employee, volunteer or student concerned.

8.2 The employer/student body will need to provide support to minimise stress associated with the process, this may need to include where possible:

• support for the Person to understand the procedures being followed

• updates on developments

• the opportunity to respond to allegations/concerns

• support to raise questions or concerns about their circumstances.

8.3 There may be limitations on the amount of information that can be shared at a particular time in order not to prejudice any Enquiry/investigation, or place any adult or child at risk. This must be agreed following consultation with the local authority Adult Safeguarding Service Manager.

8.4 There may also be occasions where there is a need to agree changes to the Person's working arrangements or to the support provided; any changes should be reported to the local authority Adult Safeguarding Service Manager.

8.5 If the Person is a member of a union or professional association or network s/he should be advised that they may wish to seek support from that organisation. The Person may also wish to seek independent advice regarding employment issues. Such advice and support should be supplementary to that provided by the employer.
9. Summary of Procedures

The following procedure should be followed when an abuse of position of trust concern is identified:

Report to the local authority Adult Safeguarding Service Manager at earliest opportunity (0300 1231 116 option 3)

If the concern involves harm to an adult at risk also make an adult safeguarding referral (http://www.cornwall.gov.uk/media/24579076/inter-agency-adults-safeguarding-referral-form-for-editing.docx)

The local authority Adult Safeguarding Service Manager will consider:

- Are children involved or at risk – if yes refer to the LADO for the local authority concerned and, if outside Cornwall, notify the LADO for Cornwall Council
- Is this potentially a criminal matter – share information with police to determine next steps
- Is there a need for adult safeguarding procedures – initiate adult safeguarding procedures and open an allegation of abuse of position of trust monitoring record?
- Is this a concern/allegation about the Person’s conduct in the workplace – contact the employer if they are not already aware. Record the decision
- Is this related to the Person’s personal life – consider disclosure. Record the decision.
- If the matter is complex, e.g. involves several employers, a high-profile Person or risks across several settings, consider whether an allegation of abuse of position of trust meeting is needed.

If the decision is to disclose and urgent contact the employer. Record the decision.

Inform the referrer if appropriate.

Write to the Person informing them a disclosure to their employer has been made.

If the decision is to disclose and non-urgent contact referrer and Person, advise of decision and agree a timescale for the Person to inform their employer. Check with the employer at the end of the agreed timescale what has been disclosed.
If the decision is not to disclose, close the record and inform the referrer and the Person.

Continue to liaise with agencies as described in section 6 above.

Continue to monitor activity.

At the case conclusion end the monitoring record. Advise the Person and employer, other Adult Safeguarding leads, commissioning teams and all other relevant agencies that the monitoring period has ended.
Flow chart – actions to be taken by the local authority service manager on receipt of abuse of position of trust concern

Concern identified about the behaviour of a person in a position of trust

Has an adult(s) at risk been harmed?
If so make an adult safeguarding referral

Refer to local authority adult safeguarding service manager

Are Children at risk – refer to LADO
Potential criminal matter – share information with police
Open an allegation of abuse monitoring record and record all decisions

Does the concern relate to the Person’s personal life?
Follow decision making procedures for disclosure see 7.4 and appendix 2

Does the concern relate to conduct in the workplace?
Inform employer immediately

Matter is not disclosable.
Record decision not to disclose.
Inform referrer and write to Person.
Close record.

Urgent disclosure to the employer is indicated.
Record decision.
Disclose to employer
Inform referrer and write to Person.

Non-urgent disclosure indicated.
Contact referrer and Person.
Negotiate timescale for the Person to disclose to their employer.
Check with the employer at the end of the timescale.
Appendix 1

The employer/student body risk management arrangements

The following outlines considerations in responding to an assessed risk. This summary of issues is not exhaustive and other responses may be relevant depending on the circumstances of each case.

Review of working arrangements

The possible risk of harm posed by a ‘person in a position of trust’ to adults with care and support needs will need to be assessed and managed effectively, taking into account the nature and seriousness of any allegation, harm to any patients/service users, and the risk of repeated incidents/ongoing behaviour.

In some cases, the employer will need to consider suspending an employee. Suspension should not be viewed as a form of sanction. It is a neutral act and does not imply guilt. People must not be suspended automatically or without careful thought. Employers must consider carefully whether the circumstances of a case warrant a person being suspended until the allegation is resolved. If the person is suspended, the employer must make arrangements to keep the individual informed about developments in the workplace.

Suspension should be considered in any case where there is cause to suspect:

- adults with care and support needs are at further risk of abuse or neglect, or
- the allegation warrants investigation by the Police, or
- is so serious that it might be grounds for dismissal, or
- the presence of the person in the workplace will interfere with the enquiry/investigation process.

Suspension may not be required where there are appropriate alternatives. This may sometimes include changes to working arrangements, such as working in a non-patient/service user contact role whilst the allegations are being investigated. The potential for alternative working arrangements will be determined by the nature of the organisation’s structure and services. Advice should be sought from HR advisors and/or employment lawyers who may assist with finding alternative arrangements to
suspension. The employer cannot be required to suspend any employee by a local authority, police or other agency.

Where a person is suspended, they are entitled to know in broad terms the reasons for the suspension. Whilst an individual has the right to respond to allegations or concerns raised, this must be at an appropriate time and care should be taken to ensure information is not shared at the point of suspension that may prejudice a subsequent Enquiry/investigation or place any person/adult at risk in additional risk.

Where, on conclusion of a case, it is decided that a person who has been suspended can return to work this process should be carefully managed. The employer should consider what help and support might be appropriate e.g. a phased return to work and/or provision of a mentor, and also how best to manage the employee contact with the adult concerned, if still in the work place.

**Disciplinary hearing processes and responsibilities**

The need for, and timing of, a disciplinary hearing is a decision for the relevant employer and will depend on the specific circumstances of the situation. Consideration should be given to whether the decisions or findings within any police or adult safeguarding process may potentially affect decision making within the disciplinary process, and vice versa. These decisions will need to be reached on a case-by-case basis.

Disciplinary hearings will be focused on the conduct of the individual as an employee. Decisions reached should, however, also give due consideration to the organisation’s responsibility to safeguard children and adults at risk.

Employers who are also service providers or service commissioners have not only a duty to the adult at risk but also a responsibility to take action in relation to the employee when allegations of abuse are made against him or her. Employers should ensure that their disciplinary procedures are compatible with the responsibility to protect adults at risk of abuse or neglect.

For these reasons, it is necessary for the disciplinary hearing process to:

- develop an understanding of the safeguarding issues that have emerged during the enquiry/investigation
• reassure itself that it is acting proportionately to the risk of abuse occurring or reoccurring
• understand the potential impact of disciplinary decisions on the adult at risk and other service users.
• assure itself that staff are safe to work with adults at risk and where needed detail the measures required to provide this reassurance
• consider the need to seek advice from their organisation’s adult safeguarding lead in relation to the impact of their decisions on an adult at risk
• understand and act upon responsibilities to refer individuals to Professional Regulatory Bodies and to the Disclosure and Barring Scheme, where appropriate.

Resignations. An employee has the right to resign, giving contractual notice at any time during disciplinary proceedings. The management in consultation with Human Resources needs to consider how to respond if the employee wishes to resign with ‘immediate effect’. It may be more appropriate to require the contractual notice period to be fulfilled. This will ensure that there is an obligation on the employee to co-operate with employment procedures. Employees may still fail to attend meetings. Every effort should be made to define risks to ensure Adults at Risk are safeguarded in all cases even if the employee refuses to participate in an internal investigation, having been given a full opportunity to answer the allegation and make representations.

If the employee’s period of notice expires before the disciplinary process is complete the employee should continue to be invited to participate at each stage of the process. It may not be possible to apply any disciplinary sanctions if an employee’s period of notice expires before the process is complete. Nevertheless, where the disciplinary process concludes that ‘there is a case to answer’ a disciplinary hearing should take place. If the (ex-) employee fails to attend the chair should continue with the normal format of a disciplinary hearing and reach a conclusion to determine whether or not the allegations are proven. If some or all allegations are proven the chair of the hearing should record the action that would have been taken if the employee had remained in employment up to the date of the hearing. The (ex-)
employee must always be notified in writing of the outcome of the disciplinary hearing.

Managers must not negotiate any form of ‘compromise agreements’ to release the employee without matters being concluded. Regardless of the circumstances of an employee leaving their employment, the employer will have an obligation to consider requests for references. References must only be given by managers with the authority to provide an accurate reference and managers are advised to seek advice from HR on receipt of reference requests. Consideration must be given as to whether a referral to the Disclosure and Barring Service is warranted (www.homeoffice.gov.uk/dbs) when any disciplinary process has been concluded. Referral can still take place after the resignation of an employee from a service. It is an offence to fail to make a referral to the DBS without good reason.

Employment records and adult safeguarding concerns should not be deleted after a time period where the employee works in a role caring for adults as future concerns may arise and past historic information will need to be available to make adequate risk assessments.
Appendix 2

Questions to assist in decision making regarding disclosure to the employer

The overall picture must be considered in decision making and decisions must be made on a case by case basis. The list below is not exhaustive.

1. Does the Person work in a setting where there are or are likely to be adults at risk?
2. What type of access to adults does the Person have?
3. How frequently does the Person have access to adults at risk?

Examples:

The Person may work for a health or social care provider, but be based in a different location from service provision, in a post which has no contact with adults at risk. The Person should be encouraged to disclose to their employer, but disclosure to the employer cannot be made under information sharing about abuse of position of trust as no adults are at risk.

Alternatively, the Person may have regular contact with adults at risk, not necessarily in a caring role but in the role of cleaner, cook, hairdresser, care taker or gardener. If the allegation involves violence, sexual assault or financial/sexual exploitation, there is cause to be concerned that the Person may use this position to harm adults at risk. Disclosure to the employer must be considered.

The Person may be working directly with adults at risk in an unsupervised setting. Any concern could prompt disclosure as the circumstances in which the person works may increase the risk of harm to an adult at risk.

4. What is the severity of the allegation?

Under most employers' codes of conduct a Person in a position of trust should inform their employer of arrests or convictions for criminal offences. The person should be encouraged to do so as soon as possible and their disclosure to the employer followed up by the local authority Service Manager with their knowledge. However, some arrests or convictions, including crimes of domestic abuse, physical and/or sexual violence may need to be disclosed immediately to the employer in order to minimise the possibility of further harm.
5. What would the impact be on an adult at risk if harm were to occur?

The individual or group worked with and their specific vulnerabilities to harm need to factor into any decision. Assumptions must not be made. For example, a Person who has perpetrated a sexual assault on a young person may well assault older people too.

6. Likelihood of reoccurrence

Does the information gathered appear to indicate a one off, and minor event? For example, a police report of rowdy behaviour at the address of a Person during a late-night birthday party, with no other incidents recorded.

Use of alcohol or drugs may be reported by the police or other professionals. Whilst there may have been no criminal convictions there may be a pattern of behaviour which will begin to impact on the Person’s place of work and adults at risk. For example, if the person concerned is an unsupervised nurse who works a night shift the need to disclose to the employer will be urgent.

7. Does the incident relate to them as a victim or perpetrator?

Reports are sometimes made which concern a Person who is the victim, often of domestic violence. If other agencies, including the police, are supporting the Person they will need to work with the local authority Service Manager to assess whether the perpetrator of abuse could pose any threat to the Person at work as well as supporting the Person to disclose to his/her employer the need for support at work. If there is no agency currently supporting the Person, the Person may need to be approached directly by the local authority adult safeguarding service.
Table 1

Factors to be considered in making decisions about allegations regarding abuse of position of trust

<table>
<thead>
<tr>
<th>Questions</th>
<th>No action under abuse of position of trust policy</th>
<th>Some cause for concern requiring further investigation</th>
<th>Cause for concern</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the Person work in a setting where there are or are likely to be adults at risk?</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>What type of access to adults does the Person have?</td>
<td>N/A</td>
<td>Adults in setting are supervised at all times</td>
<td>Has access, supervised and un supervised</td>
</tr>
<tr>
<td>How frequently does the Person have access to adults at risk?</td>
<td>N/A</td>
<td>Infrequently, not part of their job role</td>
<td>Potentially at any time, is part of their job role</td>
</tr>
<tr>
<td>What is the severity of the allegation?</td>
<td>N/A</td>
<td>No crime and no allegation of physical or sexual violence or exploitation.</td>
<td>Severe, criminal or non-criminal allegation of violence, psychological abuse, theft, neglect, substance misuse etc.</td>
</tr>
<tr>
<td>What would the impact be on an adult at risk if harm were to occur?</td>
<td>N/A</td>
<td>None</td>
<td>Impact likely</td>
</tr>
<tr>
<td>Likelihood of reoccurrence</td>
<td>N/A</td>
<td>Unlikely to re occur</td>
<td>Possibility of recurrence</td>
</tr>
<tr>
<td>Does the incident relate to them as a victim or perpetrator</td>
<td>N/A</td>
<td>Victim</td>
<td>Perpetrator</td>
</tr>
</tbody>
</table>
Appendix 3

Professional Regulatory Bodies

If a ‘person in a position of trust’ is registered with a professional regulatory body and there are concerns about their fitness to practise, the employer/volunteer manager must refer to the professional regulatory body’s guidance and consider the need to raise the concern with that professional body.

The main function of each professional regulatory body is to protect the public. To do this they will:

- set **standards** for registrants' education and training, professional skills, conduct, performance and ethics;
- keep a **register** of professionals who meet those standards;
- **take action when professionals** on the Register do not meet those standards; and
- **approve programmes** which professionals must complete to register with them.

A professional regulatory body has a range of actions that can be imposed in cases where professionals do not meet their standards. They can decide to:

- make an interim suspension order while an enquiry is being undertaken
- impose a caution order. The ‘caution’ will appear against the registrant’s name on the register;
- impose a ‘conditions of practice order’ which is a restriction or conditions on the registrant’s registration;
- suspend registration, this can be for up to one year; or
- make a ‘striking-off order’, removing the registrant’s name from the register.

The principal professional regulatory bodies within health and social care are:

- Nursing and Midwifery Council (www.nmc-uk.org)
- Health and Care Professions Council (www.hcpc-uk.org)
- General Medical Council (www.gmc-uk.org)
• General Optical Society (www.optical.org)
• General Dental Society (www.gdc-uk.org)
• General Chiropractic Council (www.gcc-uk.org)
• Royal Pharmaceutical Society of Great Britain (www.rpsgb.org.uk)
• General Osteopathic Council (www.osteopathy.org.uk)

Notification to a professional regulatory body is the responsibility of the employer. Where this action has been agreed with the local authority Adult Safeguarding Service Manager, confirmation should be provided to the lead officer that the action has been completed. The adult safeguarding service manager may also make referrals where the relevant criteria has been met, and should do so where it is necessary to ensure an appropriate referral has been made.
Disclosure and Barring Service (DBS)

The Disclosure and Barring Service (DBS) can bar a person unsuitable to work with vulnerable people, including children, from working in regulated activity in the future. If a person is barred it becomes an offence for an organisation to knowingly engage that person in regulated activity.

Employers and managers of people working in ‘regulated activity’ have a legal duty to make referrals to the Disclosure and Barring Service in certain circumstances. The local authority also has a power to make a referral, and should do where it is necessary to ensure the appropriate referral has been made.

Regulated activity is work – both paid and unpaid – with children or vulnerable adults that meets certain criteria.

In relation to vulnerable people, regulated activity in broad terms includes activities involved in:

- providing health care
- providing personal care
- providing social work
- providing assistance with cash, bills and/or shopping
- providing assistance in the conduct of personal affairs
- conveying the person

There is a duty placed on regulated activity providers and personnel suppliers to make a DBS referral in circumstances where they have permanently removed a person from ‘regulated activity’ through dismissal or permanent transfer (or would have if the person had not left, resigned, retired or been made redundant); because the person has:

- Been cautioned or convicted for a relevant offence; or
• Engaged in relevant conduct in relation to children and/or adult at risk [i.e. an action or inaction (neglect) that has harmed a child or adult at risk or put them at risk of harm]; or

• Satisfied the Harm Test in relation to children and/or adult at risk [i.e. there has been no relevant conduct (i.e. no action or inaction) however a risk of harm to a child or adult at risk still exists].

Where a DBS referral has been agreed with the local authority adult safeguarding service manager officer, confirmation should be provided to the service manager that the action has been completed. The local authority adult safeguarding service manager has the power to make a referral where the ‘person in a position of trust’ is employed in another organisation, and that organisation has failed to make a referral when appropriate to do so.

The full up-to-date guidance and definitions must be referred to when deciding whether to make a Disclosure and Barring Service referral.