



# Guidance on managing allegations against people in a position of trust

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## Introduction

The Care Act 2014 requires the local authority, its relevant partners and those providing universal care and support services to have clear policies reflecting those from the local Safeguarding Adults Board for dealing with allegations against people in positions of trust i.e. anyone working in either a paid or unpaid capacity, with adults with care and support needs. These policies should clearly distinguish between an allegation, a concern about the quality of care or practice or a complaint.

Where concerns are raised about someone who works with adults with care and support needs, the employer (or student body or voluntary organisation) must assess any potential risk to adults with care and support needs who use their services, and, if necessary, to take action to safeguard those adults. This framework must have clear recording and information-sharing guidance and timescales for action and be mindful of the need to preserve evidence. This will be whether the allegation or concern is current or historical.

## Hampshire and Isle of Wight 4LSAB Allegations Management Framework

In order to develop a consistent approach and to promote best practice across Hampshire and the Isle of Wight, the four Local Safeguarding Adults Boards have established a joint framework and process for how allegations against people in positions of trust should be notified and responded to.

The Allegations Management Framework is an overarching framework setting standards around the management of allegations against people in a position of trust, supported by clear reporting requirements and arrangements across the whole system - this includes clear information-sharing arrangements and explicit timescales for action. This is an overarching Framework and so individual organisations will be expected to develop its own business process detailing how it will implement this framework internally. This document replaces the 4LSAB DASM framework published in May 2015.

The Framework is based on the following principles:

- It reflects a proportionate, fair and transparent approach and seeks to build on current internal allegations management processes rather than replacing these.
- It applies to anyone working in a position of trust such as employees, volunteers or students, in a paid or unpaid capacity regardless of the sector. It deals with current as well as historical allegations.
- The sharing of information will be justifiable and proportionate based on an assessment of the potential or actual harm to adults or children at risk.
- Partner organisations are expected to align (or develop) current allegations management processes in line with the standards set out in this framework.

In order to gain assurance of robust internal allegations management processes in organisations not represented on the LSAB, the Boards will look to commissioners to use existing frameworks and processes to ensure safe working procedures including the management of allegations, are implemented within the organisations from whom they commission services.

Commissioning organisations should build reporting requirements into their existing procurement, commissioning and contract arrangements to ensure that provider organisations

promptly share information about incidents falling within the remit of this Framework with their commissioners.

### **Responsibilities of partner organisations**

Individual organisations are responsible for responding to allegations regarding any person working for them in a position of trust with adults with care and support needs and for undertaking all necessary action in line with their internal process and agreed timescales. The specific responsibilities of individual organisations include:

- Establishing a clear internal allegations management procedure setting out the process, including timescales, for investigation and what support and advice will be available to individuals against whom allegations have been made. This procedure should reflect the 4LSAB Allegations Management Framework.
- Ensuring their staff and managers have access to expert advice and guidance to enable them to fulfil their responsibilities when responding to allegations.
- Responding promptly to allegations regarding their staff and for undertaking all necessary action in line with their internal process and agreed timescales.
- Monitoring the progress of cases to ensure that they are dealt with as quickly as possible, consistent with a thorough and fair process.
- Ensuring appropriate systems are in place to support and provide regular updates to the employee in respect of the investigation.
- Making prompt referrals to the Disclosure and Barring Service (DBS) and/or Professional Registration Bodies, as relevant.
- Ensuring appropriate recording systems are in place and that these provide a clear audit trail about the decision making process and any recommendations arising from the investigation and subsequent actions.
- Ensuring the control of information in respect of individual cases is in accordance with accepted data protection and confidentiality requirements.
- Maintain records of the number and nature of allegations made and using this data to inform service improvement and development.

Whilst no longer a requirement in the Care Act 2014, the LSABs strongly encourage partner organisations to establish a nominated lead or Safeguarding Allegations Management Advisor (SAMA), to provide advice and guidance to their organisation and to maintain oversight of complex cases involving allegations against people in a position of trust. The SAMA should have a significant level of expertise and knowledge in adult safeguarding and they should also have an operational leadership role in respect of their organisation.

### **Applying this Framework in practice**

This section provides guidance on how concerns should be reported and the process to be used to respond to these. As this is an overarching framework, individual organisations will be responsible for providing detailed guidance for staff reflecting any organisational requirements and standards that must be followed.

If a 'person in a position of trust' is alleged to have abused or harmed an adult with care and support needs, or who may pose a risk of abuse to an adult with care and support needs, it is

essential that the concerns are appropriately reported and responded to under the Hampshire 4LSAB Multi-Agency Safeguarding Adults Policy and Guidance (May 2015).

Examples of concerns could include allegations that relate to a person who works with adults with care and support needs who has:

- Behaved in a way that has harmed, or may have harmed an adult or child
- Committed a criminal offence against, or related to, an 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
- Concerns could also arise from the person's home / personal life, as well as within their work and may include situations such as:
- A person has behaved (or is alleged to have behaved) towards another adult in a way that indicates they may pose a risk of harm to adults with care and support. For example, this may include situations where a person is being investigated by the police for domestic abuse to a partner, and undertakes voluntary work with adults with care and support needs.
- A person has behaved (or is alleged to have behaved) towards children in a way that indicates that they may pose a risk of harm to adults with care and support need. For example, this may include situations where a person is alleged to have abused a child, and is a student undertaking professional training to work with adults with care and support needs.
- A person is the subject of a formal safeguarding enquiry into allegations of abuse or neglect which have occurred in one setting. However, there are also concerns that the person is employed, volunteers or is a student in another setting where there are adults with care and support needs who may also be at risk of harm.
- When a person's conduct towards an adult may impact on their suitability to work with, or continue to work with children, this must be referred to the local authority's designated officer (LADO).

The purpose of the process is to ensure that risks potentially posed by the person are appropriately managed, alongside the specific safeguarding needs of the adult at risk. Allegations must be investigated promptly in line with the organisation's internal allegations management policy. In the interests of transparency and accountability, organisations must ensure clear recording of decisions and recommendations arising from the investigation.

Where a formal section 42 safeguarding enquiry is being undertaken, the function can be carried out as part of the enquiry process and this should include:

- An assessment and management of risk posed by a 'person in a position of trust' to be considered in the initial safeguarding planning meeting and subsequent meetings
- Any action taken in respect of a person to be included in the safeguarding enquiry report
- Supporting documentation should be reviewed as part of the Checking and Review stage of the safeguarding enquiry
- Further actions to safeguard or manage risk should be included in the safeguarding plan

Where a formal safeguarding enquiry is not being undertaken, a 'Managing Concerns Meeting' should be convened to assess and determine the actions required to manage the risk posed by a 'person in a position of trust'. Such meetings may need to include Care

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Quality Commission, safeguarding lead, LADO, commissioning, contracts, police and other relevant parties where appropriate to the case. Individual organisations will determine who should chair such meetings. The purpose of Managing Concerns Meeting' is to undertake a collaborative assessment of the level of risk posed by the person about whom concerns have been raised and to clarify what information should be shared with the employer. The sharing of information will be justifiable and proportionate based on an assessment of the potential or actual harm to adults or children at risk.

Where it is necessary to refer individuals to the DBS and/or the relevant professional body, these referrals will be made promptly and made no later than five working days from when the case is concluded.

### Information Sharing

Decisions on sharing information must be justifiable, proportionate and based on the potential or actual harm to adults or children at risk. The rationale for decision-making should always be recorded. When sharing information between agencies about adults, children and young people at risk it should only be shared:

- Where relevant and necessary, not simply sharing all the information held;
- With the relevant people who need all or some of the information; and
- When there is a specific need for the information to be shared at that time.

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.

There may be times when a person is employed to work with adults but their behaviour towards a child or children (for example outside of work) may impact on their suitability to work with or continue to work with adults. Likewise, there may also be times when a person's conduct towards an adult outside of work may impact on their suitability to work with or continue to work with children. All these situations must be risk assessed individually in order to make a decision about referring the case to the relevant organisation.

#### Informing the person about whom concerns have been raised:

- Unless it puts the adult at risk or a child in danger, the person should be informed an allegation against them has been made and that it will be shared with their employer. They should be offered a right to reply.
- If possible, the person's consent should be sought to share information and advised what information will be shared, how and who with. Each case must be assessed on its own individual merits as there may be cases where informing the person about details of the allegation increases the risks to a child or adult at risk.
- The person should be given the opportunity to inform their employer themselves – sometimes the immediacy and nature of the risk won't allow for this.

- The organisation should check appropriate information has been shared with the employer to enable them to assess risk, and review the suitability of the person continuing to work and any other actions required.

#### Informing the employer:

- a) The employer must be informed if there are concerns about an employee during the course of their work.
- b) If concerns arise in the person's personal or private life, or in another work setting, the decision to share information must be justifiable and proportionate and based on the potential or actual harm to adults at risk. The decision to share information and the rationale for doing so should be recorded.
- c) Decisions about sharing information should consider the key question of 'whether the person has behaved or may have behaved, in a way that questions their suitability to undertake their current role or to support adults at risk'.
- d) The following issues should be taken into consideration when making decisions about sharing information with the employer:
  - Nature and seriousness of the actions/behaviour
  - The context within the actions/behaviour occurred
  - Frequency or patterns of actions/behaviour
  - Nature of the person's access/role with adults at risk
  - Potential impact on an adult with care and support needs

#### Informing other local authorities:

- a) If the person is employed, volunteers or is a student (paid or unpaid) in another local authority area, inform the relevant local authority area.
- b) If there is also a risk to children, also inform the relevant LADO.

#### Working jointly with the police:

- a) If the concerns involve possible criminal offences to either an adult or child, liaise with the police about the need for possible criminal investigation.
- b) When the police are undertaking criminal investigations, they have a common law power to disclose sensitive personal information to relevant parties where there is an urgent 'pressing social need'.
- c) A pressing social need might be the safeguarding or protection from harm of an individual, a group of individuals, or society at large. This could include informing a relevant employer about criminal investigations relating to their employee where this has been assessed as necessary and appropriate in a particular case.

#### Informing the LADO and children services:

- a) If the person may pose a risk of harm to his/her own children, or other children/young people in the course of their private life, children services should be informed without delay.
- b) If the person may pose a risk to children/young people in the course of their work, paid or unpaid, the LADO should be informed without delay.

#### Informing Commissioning and Contracts Teams:

- a) Where the concerns involve a person working in a commissioned service, inform the relevant commissioning/contracts team.
- b) Within their own procedures, commissioning/ contracts teams can take action as deemed appropriate to ensure the service has appropriate standards of practice to prevent and respond to any future risk of harm.
- c) In accordance with local arrangements, if the person works for the NHS, the CCG safeguarding lead must be informed.
- d) If the person works for the police, the Police safeguarding lead must be informed.

#### Informing the Care Quality Commission:

- a) If the person is employed or volunteers for a regulated service provider, CQC should be informed.
- b) CQC can take action as deemed appropriate within their own procedures to ensure the service has appropriate standards of practice to prevent and respond to any future risks of harm.
- c) This includes the employer's 'fitness' to operate and responsibility to safeguard adults at risk

#### Informing Professional Bodies:

- a) If the person is registered with a professional body and there are concerns about their fitness to practice, the employer/volunteer manager must refer to the professional body's published guidance and consider the need to raise the concern with that professional body.
- b) A Professional Body has a range of options where appropriate, these usually include suspending the person from practice, de-registering them or imposing conditions of practice that the person must work under. See Appendix A for more information about referrals to Professional Bodies.

## Risk Management

### Employer risk assessment and management process:

- a) The organisation must have a mechanism for gaining assurance that the presenting risks have been appropriately assessed and responded to seeking evidence of the action taken as required.
- b) Employers are 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.

### Risk management arrangements:

- a) Risk management arrangements are the responsibility of the employing organisation taking into account their assessment of the risk, their own internal policies and procedures, and employment law.

### Review of working arrangements:

- a) The employer is responsible for assessing and managing the risk of harm posed by the person taking into account the nature and seriousness of the allegation, harm to any patients/service users, and the risk of repeated incidents/on-going behaviour.
- b) Sometimes the employer will need to consider suspending an employee - this should not happen automatically but only after they have considered if the circumstances of a case warrant a person being suspended until the allegation is resolved.
- c) Whilst it's the employer who makes this decision, it is entirely reasonable to request a risk assessment where the employer has decided NOT to suspend.
- d) The employer should also make arrangements to keep the individual informed about developments in the workplace

### Supervision and Training

- a) Supervision and training may be relevant to managing aspects of a presenting risk.
- b) Supervision is a formal process ensuring the performance of each member of staff in a team, section, or unit is evaluated and reviewed so that, where necessary, learning and change can take place. Supervision is an important vehicle for meeting practice standards.
- c) Supervision should address any issues of practice that are below the expected standard; and be used to ensure the practice of employees and volunteers reflects essential values and principles of practice, including choice, capacity, consent, privacy, dignity and respect to patients/service users, as well as the promoting safeguarding and individual wellbeing.



- d) Training should be used to ensure employees, students and volunteers have the appropriate skills, knowledge and attitudes; but also in response to identified needs as may emerge from practice, supervision or personal development programmes.

### Suspension:

- a) Suspension may not be required if risks can be managed through changes to working arrangements such as:
- Not working with a particular patient/service user
  - Working in a non-patient/service user contact role whilst the allegations are being investigated.
  - If a person is suspended, they are entitled to know in broad terms the reasons for this.
- b) Whilst an individual must be afforded the right to respond, this must be at an appropriate time.
- c) 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 at additional risk.
- d) Suspension should always be considered in any case where there is cause to think:
- an adult with care and support needs is 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 work place will interfere with the enquiry/investigation process
- e) Where a person is suspended, they are entitled to know in broad terms the reasons for the suspension. Whilst an individual must be afforded 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 at additional risk.

### **Support for the person against whom allegation has been made**

Alongside the duty of care towards the adult at risk, is the duty of care to the employee. The employer needs to provide support to minimise stress associated with the process, this may need to include:

- Support to understand the procedures being followed
- Updates on developments
- Opportunity to respond to allegations/concerns
- Support to raise questions or concerns about their circumstances.

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 person at risk. Support may be available via occupational health or employee welfare arrangements where they

exist. If the person is a member of a union or professional association or network he or she 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 however, should be supplementary to that provided by the employer. There may be occasions where there is a need to agree changes to the person's working arrangements or to the support provided, to safeguard them from unfounded allegations in the future.

### **Disciplinary hearing processes and responsibilities**

The need for, and timing of, a disciplinary hearing is a decision for the 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 safeguarding adults process may potentially affect decision making within the disciplinary process, and vice versa. Such 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 must ensure that their disciplinary procedures are c with the responsibility to protect adults at risk of abuse or neglect.

If an organisation removes an individual (paid worker or unpaid volunteer) from work with an adult with care and support needs (or would have, had the person not left first) because the person poses a risk of harm to adults, the organisation must make a referral to the Disclosure and Barring Service. It is an offence to fail to make a referral without good reason. Please see Appendix B for more information about DBS referrals.

Where it is necessary to refer individual employees to the DBS and/or the relevant professional body, these will be made promptly and as soon as possible once the investigation has concluded. This includes sharing with the professional body, the supporting evidence required as part of the referral

### **Recording and data collection**

Individual organisations should maintain appropriate records of cases in line with the Data Protection Act 1998 requirements and individual organisational policies around information governance and record retention.

Individual organisations should also establish monitoring arrangements to enable to activity relating to allegations against staff to be tracked. Collated anonymised information about the number and nature of allegations made and their outcomes should be produced at least annually and these reports shared with relevant boards, committees and leadership teams to inform service improvement and development.

## Support from the Local Safeguarding Adult Board

The LSABs will provide on their respective websites information about how and to whom to report concern about possible abuse or neglect which will ensure non commissioned or funded voluntary organisations and charities can access information about their responsibilities to act upon concerns about abuse or neglect.

The 4LSABs have established a SAMA network comprised of professionals who have an advisory or support role in their organisation around allegations management in order to facilitate all essential networking and information sharing across agencies. This also provides an opportunity for regular updating. It is anticipated that the SAMA network would meet every six months.

## Appendix A: Referrals to Professional Bodies

If the person is registered with a professional body and there are concerns about their fitness to practice, the employer/volunteer manager must refer to the professional body's published guidance and consider the need to raise the concern with that professional body.

A professional body has a range of options where appropriate, these usually include suspending the person from practice, de-registering them or imposing conditions of practice that the person must work under. The principal organisations within health and social care are:

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

Each professional registration body:

- Maintains a public register of qualified workers
- Sets standards for conduct, performance and ethics
- Considers allegations of misconduct, lack of competence or unfitness to practice
- Makes decisions as to whether a registered worker can practice

Notification of a professional body is the responsibility of the employer. Where this action has been agreed with the organisation's nominated safeguarding lead, confirmation should be provided to them that the action has been completed. As the responsible authority for adult safeguarding, the local authority has the power to make a referral where the relevant criteria have been met, and should do so where it is necessary to ensure an appropriate referral has been made.

## Appendix B: Referrals to the Disclosure and Barring Service (DBS)

On the 1st December 2012 the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged and became the Disclosure and Barring Service (DBS). This means that these same services are now provided by a single organisation rather than two.

The Disclosure and Barring Service 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 volunteer 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 adults, 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 '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 vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or
- Satisfied the Harm Test in relation to children and/or vulnerable adults [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

It is also possible to make a referral where this legal duty has not been met. For example, where there are strong concerns but the evidence is not sufficient to justify dismissing or removing the person from working with children or vulnerable adults. Such a referral would need to be compliant with relevant employment and data protection laws.

Where the need for a referral to the Disclosure and Barring Scheme (DBS) has been agreed with the organisation's nominated safeguarding lead, confirmation should be provided to them that the action has been completed. As the responsible authority for adult Multi-Agency Safeguarding Policy and Guidance 2<sup>nd</sup> Edition December 2016  
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safeguarding, the local authority has the power to make a referral where the 'person in a position of trust' is employed in another organisation, and should do so where it is necessary to ensure an appropriate referral has been made.

The full up-to-date guidance and definitions must be referred to when deciding whether to make a Disclosure and Barring Service referral. For further information contact the Disclosure and Barring Service (DBS):

Helpline: 03000 200 190

Website: [www.homeoffice.gov.uk/agencies-public-bodies/dbs](http://www.homeoffice.gov.uk/agencies-public-bodies/dbs)

Email: [customerservices@dbs.gsi.gov.uk](mailto:customerservices@dbs.gsi.gov.uk)