

Position of Trust Policy

HR15

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Reviewed by	

Date: []

Review Data

Initial Production

Name	Role/Department	RACI	Date

R = Responsible for writing the policy; **A** = Accountable; **C** = Consulted; **I** = Informed

Change History

Version	Date	Details of Change	Author

Emergency Contact Details

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CQC Fundamental Standards

Regulation Number	Regulation Details
Regulation 12: Safe care and treatment	Staff must only work within the scope of their qualifications, competence, skills and experience.
Regulation 19: Fit and proper persons employed	Persons employed must be of good character and have the qualifications, competence, skills and experience which are necessary for the work to be performed by them.

Key Lines of Enquiry

KLOE	How this applies to Access to Files and Records
Safe	By dealing with issues concerning People in Position of Trust in an appropriate way we promote the safeguarding of children and vulnerable adults.

Related Documents

This policy should be read in conjunction with our:

- CMN04 - Information Governance Policy
- CM33 - Safeguarding Vulnerable Adults Policy

Policy Statement



Policy Aims

This policy applies to all who have responsibilities for responding to allegations or concerns raised about a person, whether an employee, volunteer or student, paid or unpaid who works with or cares for adults with care and support needs. These individuals are known as People in Position of Trust (PiPoT)

Dealing with Position of Trust issues can be complex due to the competing requirements of balancing individual rights to confidentiality against obligations to disclose information in order to safeguard adults at risk.

Each case must be dealt with on its own facts and with reference to relevant legislation and Information Sharing Protocols. The Adult Safeguarding Lead and supporting process must detail the basis upon which decisions are made, particularly when making a decision to disclose confidential information, in order to demonstrate justification and proportionality.

Legal advice may be sought due to the legal complexities involved and to ensure the ASL is acting in accordance with the law.

Background

The Care Act 2014 statutory guidance states that each Safeguarding Adults Board (SAB) should establish and agree a framework and process for organisations 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 with care and support needs. The Guidance is also clear that the local authority, Police and Clinical Commissioning Group and those providing universal support services, should have clear policies in line with those from the SAB for dealing with such allegations. This includes clear recording and information-sharing guidance, timescales for action and to be mindful of the need to preserve evidence. This will be whether the allegation or concern is current or historical.

Each member of the SAB should have an identified Adult Safeguarding Lead (ASL) responsible for the management and oversight of individual complex cases and coordination where allegations are made or concerns raised about a person, whether an employee, volunteer or student, paid or unpaid. ASLs should keep in regular contact with their counterparts in partner organizations.

They requires Local Authorities to have a Local Authority Designated Officer (LADO) who is responsible for dealing with such allegations made against adults who are employed in posts where they have direct contact with children and young people and allegations have been made that require consideration of their suitability to work/volunteer with these groups. There should be appropriate liaison between ASLs and the LADO.

This guidance applies to all concerns whether current or historical where information is identified in connection with:

- The PiPoT's own work/voluntary activity (with Adults and/or Children) (for example where a worker or volunteer has been accused of the abuse or neglect of an adult with care and support needs or a child).
- The PiPoT's life outside work i.e. concerning adults with care and support needs in the family, social circle (for example where a son is accused of abusing his older mother and he also works as a domiciliary care worker with adults with care and support needs. Or where a woman is convicted of grievous bodily harm and also works in a residential home for people with learning disabilities).
- The PiPoT's life outside work i.e. concerning risks to children, the individual's own children or other children (for example where a woman who works in a host authority with women who suffer domestic abuse and lives in the neighbouring authority is subject to child protection procedures involving her own children due to domestic abuse by her husband).

And the person has:

- Behaved in a way that has harmed or may have harmed an adult with care and support needs or a child.
- Possibly committed a criminal offence against or related to an adult/s with care and support needs or child.
- Behaved towards an adult with care and support needs in a way that indicates s/he is unsuitable to work with adults with care and support needs.
- May be subject to abuse themselves and as a consequence their ability to provide a service to adults with care and support needs must be reviewed.
- Behaved in a way which questions their ability to provide a service to an adult with care and support needs which must be reviewed e.g. conviction for grievous bodily harm against someone who is not an adult with care and support needs.

Note: This guidance is not a substitute for but may be used in conjunction with other formal legal processes for example MARAC, MAPPA etc.



Key Question: What happens if the allegation concerns children?

There may be times when a person is working with adults with care and support needs and their behavior towards a child or children may impact on their suitability to work with or continue to work with adults with care and support needs. This should be referred to the appropriate ASL by the Local Authority Designated Officer (LADO). Each situation will be risk assessed individually.

There may also be times when a person's conduct towards an adult with care and support needs may impact on their suitability to work with or continue to work with children. All these situations must be referred to the LADO.

Historical Concerns

Where PoT information relates to historical abuse it is important to ascertain if the person is currently working with adults with care and support needs or children and if that is the case, to consider whether the current employer should be informed of this. This would become an adult POT concern if the person currently works with or has contact with adults with care and support needs.

A historical allegation of:

- Child abuse must be referred to Children's Services for investigation if they were a Looked After Child, if not to the Police.
- Adult abuse, where there is no current risk to the adult with care and support needs who is making the allegation of historic abuse. This would become an adult PoT concern if the alleged person causing harm currently works with or has contact with adults with care and support needs.
- An out of area allegation of adult or child abuse must be referred to the appropriate LADO or ASL in the area where the alleged abuse took place. It is essential that discussion takes place between parties to decide who is the most appropriate to deal with the case.

Care Act 2014

s14.121 Whilst the focus of safeguarding adults work is to safeguard one or more identified adults with care and support needs, there are occasions when incidents are reported that do not involve an adult at risk, but indicate, nevertheless, that a risk may be posed to adults at risk by a person in a position of trust.

s14.122 Where such concerns are raised about someone who works with adults with care and support needs, it will be necessary for the employer or student body or voluntary organization) to 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."

14.11 When a complaint or allegation has been made against a member of staff, he/she should be made aware of their rights under employment legislation and any internal disciplinary procedures.

s14.116 Employers who are also providers or commissioners of care and support not only have a duty to the adult with care and support needs, but also a responsibility to take action in relation to the employee when allegations of abuse are made against them. Employers should ensure that their recruitment and disciplinary procedures are compatible with the responsibility to protect adults at risk of abuse or neglect

s14.118 Where appropriate, employers should report workers to the statutory and other bodies responsible for professional regulation, such as the Health Care Professional Council, General Medical Council and the Nursing and Midwifery Council. If someone is removed from their role (paid worker or unpaid volunteer) because the person poses a risk of harm to adults, a referral to the Disclosure and Barring Service (DBS), must be made. This applies even if the person leaves their role to avoid a disciplinary hearing following a safeguarding incident and the employer/volunteer organization feels they would have dismissed the person based on the information they hold

s14.119 The standard of proof for prosecution is 'beyond reasonable doubt'. The standard of proof for internal disciplinary procedures and for discretionary barring consideration by the Disclosure and Barring Service (DBS) and the Vetting and Barring Board is usually the civil standard of 'on the balance of probabilities'. This means that when criminal procedures are concluded without action being taken this does not automatically mean that regulatory or disciplinary procedures should cease or not be considered. In any event there is a legal duty to make a safeguarding referral to DBS if a person is dismissed or removed from their role due to harm to a child or a vulnerable adult

Data Protection Act

Principles of the Data Protection Act and Information Sharing protocols must be followed. Whilst these principles are general, each case will be unique and advice and guidance might be sought from legal departments (for legal implications and advice) and information governance (for data protection advice and guidance) before information is shared. Information in each case should be based on an analysis of the risks involved.

In all but exceptional circumstances before their information is shared there is a responsibility to inform the PiPoT of the allegation made against them so they have the right of reply. Wherever possible consent to share the information should be sought. Responsibility for obtaining consent lies with the person holding the original information. In cases where consent is not given each case must be assessed individually as there may be rare cases where informing the PiPoT may increase the risks to the adult with care and support needs.

Decisions on sharing information must be justifiable and proportionate, based on the potential or actual harm to adults with care and support needs.

A basic principle underlining information sharing is 'the right information to the right people at the right time'. This means that when sharing information about adults with care and

support needs, children and young people between agencies information should only be shared:

- that is relevant and necessary, not simply all the information we hold,
- with the relevant people who need the information,
- when there is a specific need for the information to be shared at that time.

Adult Safeguarding Lead

Position of Trust Concerns:

- Hold responsibility for the management and oversight of individual complex cases and coordination where allegations are made or concerns raised about a person, whether an employee, volunteer, or student, paid or unpaid.
- Monitor the progress of cases to ensure that they are dealt with as quickly as possible, consistent with a thorough and fair process.
- Receive information from or share information with the LADO regarding a person working with adults, when their behaviour towards a child or children may impact on their suitability to work with or continue to work with adults with care and support needs. Ensuring that each situation is risk assessed individually.
- Refer information to the LADO when a person's conduct towards an adult may impact on their suitability to work with or continue to work with children.
- Ensure that the individual is informed that the information regarding the allegation against them will be shared, unless it puts the adult with care and support needs or child in danger.
- Ensure that the consent of the individual to share information is obtained on receipt of the information.
- Ensure that the person with the allegation against them is offered a right to reply, wherever possible their consent to share is sought, and they are informed what information will be shared, how and who with.
- Ensure that each case is assessed individually to consider whether informing the person about details of the allegations may increase the risks to the child or adult with care and support needs.
- Ensure decisions on sharing information are justifiable and proportionate, based on the potential or actual harm to adults with care and support needs or children and that the rationale for decision making is always recorded.
- Ensure that when information about adults, children and young people at risk is shared between agencies, it is only shared:
 - where relevant and necessary, not simply 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.

Position of Trust Process:

- Ensure that systems are in place to provide the employee with support and regular updates in respect of the management of the PoT concern and/or adult safeguarding enquiry, taking care not to compromise the right to a fair trial in Article Six of the European Convention on Human Rights as incorporated by the Human Rights Act 1998.

- Ensure that appropriate recording systems are in place that provide clear audit trails about decision making and recommendations in all processes relating to the management of adult safeguarding allegations against the person alleged to have caused the harm or risk of harm and ensure the control of information in respect of individual cases is in accordance with accepted Data Protection and Confidentiality requirements.

Agency Responsibilities:

- Develop process to highlight and provide assurance of the extent to which the organisation prevents abuse and neglect taking place.
- Provide advice and guidance within their organisation, liaising with other agencies as necessary.
- Develop performance and quality assurance measures for reporting internally and to the Safeguarding Adults Board. Work closely with Human Resources colleagues to ensure safe recruitment practice and appropriate involvement with the management of Position of Trust concerns.

All ASLs will:

- Keep in regular contact with their counterparts in partner organisations.
- Work with care and support providers and other service providers e.g. housing and NHS trusts to ensure that referral of individual employees to the DBS and, or, Regulatory Bodies (e.g. CQC, HCPC, GMC, NMC) are made promptly and appropriately and that any supporting evidence required is made available.



Key Points to Take Away

- Each case must be dealt with on its own facts and with reference to relevant legislation and Information Sharing Protocols.
- Where PoT information relates to historical abuse it is important to ascertain if the person is currently working with adults with care and support needs or children and if that is the case, to consider whether the current employer should be informed of this.
- Principles of the Data Protection Act and Information Sharing protocols must be followed.

Authorisation and Signature

This Policy is the authorised version agreed by the Directors of Careville Ltd. All employees are expected to follow this policy and failure to do so could result in disciplinary action.

Director's Signature

Director