



South Gloucestershire Safeguarding Adults Board



Guidance on managing allegations against people in a position of trust

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Acknowledgements

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Introduction

This document provides guidance for dealing with allegations against people who work in 'positions of trust' i.e. anyone working in either a paid or unpaid capacity, with adults with care and support needs. This guidance does not replace existing safeguarding procedures and must be read and used in the context of the South Gloucestershire Multi-Agency Safeguarding Policy and Procedures.

This guidance applies to all who work, either in 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 behaviours towards adults and/or children, either in employment or in their personal life, must be carefully considered. These concerns may be current or historical.

In this document the terms 'employer/employee' will be used to refer to paid staff, unpaid volunteers and students.

Where concerns are raised about someone who works with adults with care and support needs, the employer must assess any potential risk to adults who use their services and if necessary take action to safeguard those adults.

The Care Act Statutory Guidance requires the local authority, its relevant partners and those providing universal care and support services to have clear policies for dealing with allegations against people in positions of trust.

These policies should clearly distinguish between an allegation, a concern about the quality of care or practice, or a complaint. They 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.

The guidance is based on the following principles:

- It reflects a proportionate, fair and transparent approach and seeks to build on current 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) their current internal allegations management processes in line with the standards set out in this guidance.

In order to gain assurance of robust internal allegations management processes in organisations not represented on the Safeguarding Adults Board, it 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 allegations falling within the remit of this guidance 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.
- ✓ Ensuring they have clear, simple and easily understood policies and procedures for dealing with whistleblowing concerns.
- ✓ 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

Identifying Concerns

Concerns can be identified or raised in different ways. For example through the work of partner agencies such as the police, by a member of the public or other third party, through adult safeguarding enquiries, or shared by the Local Authority Designated Officer (LADO) through Children's processes.

Concerns may arise in connection with:

- The persons paid work, student placement or volunteer activity with adults. The person has been alleged to have abused or neglected an adult at risk connected to their place of work. These concerns will lead to an enquiry under Adult Safeguarding Procedures.
- 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, 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
- Behaved in a way that casts doubt on their suitability to work with adults at risk

The process applies whether the allegation relates to a **current** or an **historic** concern. 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 information should be shared with the current employer.

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. Each allegation or concern should be considered on a case by case basis and in the context of other allegations made.

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.

All allegations and concerns, whether they arise within or outside of the person's workplace, must be reported to the local safeguarding service as soon as possible

Allegations that arise within the person's workplace

Allegations about a member of staff relating to specific service users are dealt with by the Safeguarding Team who have responsibility for enquiries into individual safeguarding concerns. The employer will be informed if they do not already know and a formal section 42 safeguarding enquiry may be undertaken. The Safeguarding Team co-ordinate the enquiry and log information on the individual service user's record.

Allegations about a member of staff that cannot be linked to any individual service user, but happen at work (such as night staff sleeping on duty) where everyone receiving support is potentially at risk, are passed to the Adult Safeguarding Manager who has responsibility for organisational concerns/enquiries. The information and the service provider's response is logged on the service provider's confidential record.

The enquiry process should include:

- ✓ An assessment and management of risk posed by the 'person in a position of trust' to be considered in any safeguarding meetings
- ✓ Any action taken in respect of a person to be included in the safeguarding enquiry report
- ✓ Further actions to safeguard or manage risk should be included in the safeguarding plan

Allegations that arise outside the person's workplace

Where a formal section 42 safeguarding enquiry is not being undertaken because the concern relates to the person's life outside of work then the Local Authority Adult Safeguarding Manager should be notified soon as possible, as the risk is spread across all the service users and therefore is of an organisational nature.

The service provider has a responsibility to risk assess the situation as it potentially affects everyone in the organisation. Their risk assessment/response is logged on the service provider's confidential record.

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.

There is no primary statutory duty associated with the position of trust process so any actions taken must be in line with other relevant statutory provision, e.g. General Data Protection Regulations, Human Rights Act 1998 and employment legislation. Any actions and interventions must be lawful and proportionate in line with statutory provision.

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;
- 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. The person should be informed of the nature of the concern and their account should be ascertained.
- 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:

The employer must be informed if there are concerns about an employee during the course of their work.

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.

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’.

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 the Care Quality Commission:

- a) If the person works at 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

In the event of a police investigation it is essential the police are contacted and advice sought before any employer action is taken to ensure any possible criminal investigation is not jeopardised.

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 are the responsibility of the employing organisation taking into account their assessment of the risk, their own internal policies and procedures, and employment law.

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. The employer should seek advice from their HR department when considering this course of action. 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.

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.

Supervision and training may be relevant to managing aspects of a presenting risk. 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 promoting safeguarding and individual wellbeing.

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.

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.

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 (DBS)**. It is an offence to fail to make a referral without good reason. 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 should 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 General Data Protection Regulations and individual organisational policies around information governance and record retention.

South Gloucestershire Council maintains confidential records of allegations against people working in Positions of Trust. An annual report to the Safeguarding Adults Board will be produced to report anonymised data about this work, to enable analysis of trends and themes.

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.org.uk)
- 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)
- Social Work England (www.socialworkengland.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 to a professional body is the responsibility of the employer.

Where this action has been agreed with the organisation's nominated safeguarding lead, or as part of a Safeguarding Adults Enquiry, confirmation should be provided to the safeguarding lead or the chair of the Safeguarding Adults Enquiry 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 adults that meets certain criteria. In relation to 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 adults that has harmed a child or adult or put them at risk of harm; or
- Satisfied the Harm Test in relation to children and/or adults [i.e. there has been no relevant conduct 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 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, or as part of a

Safeguarding Adults Enquiry, confirmation should be provided to the safeguarding lead or the chair of the Safeguarding Adults Enquiry that the action has been completed.

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

Email: customerservices@dbs.gsi.gov.uk