



Bristol Safeguarding Adults Board (BSAB)

Guidance

Managing Concerns

‘People in a Position of Trust’

October 2015

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1. Introduction

The Care Act 2014 and Statutory Guidance requires Safeguarding Adult Boards (SAB) 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.

Bristol Safeguarding Adults Board (BSAB) partner organisations may choose to appoint a Safeguarding Adults Lead Officer where it is proportionate to their involvement in and responsibility for adult safeguarding. The Lead Officer should be of sufficient seniority within the organisation to be able to make decisions on behalf of their organisation and also to challenge policy or practice issues.

The Lead Officer will provide expertise and oversight when managing allegations in relation to 'People in a Position of Trust' who may pose a risk to adults with care and support needs.

'People in a Position of Trust' are defined as those who work with vulnerable people including children, young people and adults as an employee, volunteer or student in a paid, unpaid or a voluntary basis.

2. Implementation

Each BSAB partner organisation must ensure that its Human Resource Team is fully aware and involved in the implementation of this Framework.

This Framework recognises the interfaces with other processes such as LADO, Disclosure and Barring (DBS) and Fitness to Practice referrals and member organisations must ensure these are managed effectively.

3. Scope of the framework

- The scope of this framework is limited to processes relating to the investigation and management of allegations against staff or volunteers linked to adult safeguarding;
- The framework is supported by clear reporting requirements and arrangements across the whole system - this includes clear information sharing arrangements and explicit timescales for action.

The framework is based on the following principles:

- It builds on current internal allegations management processes

- It applies to any employee, volunteer or student, paid or unpaid in whatever sector and will deal with current and historical allegations
- It is designed to reflect a proportionate, fair and transparent approach.

All BSAB member organisations (whether or not they have a nominated Safeguarding Adults Lead Officer) are responsible for responding to allegations regarding their staff and for undertaking all necessary actions within the timescales agreed.

This guidance sets out the framework for how concerns should be reported and responded to. In order to develop a consistent approach it is intended that this guidance will be adopted by each of the BSAB member organisations.

In cases where there is a concern that an employee, volunteer or student (paid or unpaid) is alleged to have abused an adult with care and support needs, or 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 within the Bristol Multi-Agency Safeguarding Adults Policy.

For the purpose of this guidance, employees, volunteers or students (paid or unpaid) will be referred to as a 'person in positions of trust'. 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 will also include adults with care and support needs who employ Personal Assistants (PA's).

4. Raising a concern about a 'person in a position of trust'

Concerns that a 'person in a position of trust' has, or may have abused a person with care or support needs, or their behaviour poses a risk to them, must be responded to within the Bristol Multi-Agency Safeguarding Adults Policy.

The following instances must be reported:

- A 'person in a position of trust' has or is alleged to have abused an adult with care and support needs
- A 'person in a position of trust' has behaved (or is alleged to have behaved) towards another adult in a way that indicates that they may pose a risk of harm to an adult with care and support needs. This could include situations

involving an investigation into a criminal offence, even if the victim of that offence was not a person with care and support needs

- A 'person in a position of trust' has behaved (or is alleged to have behaved) towards children in a way which means they may pose a risk of harm to adults with care and support needs.

It is important to highlight that concerns could emerge from the person's home or personal life, as well as their professional work and must be reported in the same way.

5. General responsibilities of all Safeguarding Adults Lead Officer

The role and responsibilities of all Safeguarding Adults Lead Officer's is to:

- Be responsible for the management and oversight of individual complex cases
- Co-ordinate allegations made or concerns raised, about a person, whether an employee, volunteer or student, paid or unpaid
- Promote partnership working and keep in regular contact with their counterparts in partner organisations
- Assess and highlight the extent to which their own organisation prevents abuse and neglect taking place
- Provide advice and guidance within their organisation, liaising with other agencies as necessary
- Monitor the progress of cases to ensure that they are dealt with as quickly as possible, are consistent with a thorough and fair process
- Ensure systems are in place to support and provide regular updates to the employee in respect of the investigation. Particular care must be taken to not breach 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 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
- Ensure the control of information in respect of individual cases is in accordance with accepted Data Protection and Confidentiality requirements.

6. Specific responsibilities of the Local Authority Safeguarding Adults Lead Officer

The local authority Safeguarding Adults Lead Officer will work closely with the Children's Services Local Authority Designated Officer (LADO) and other Safeguarding Adults Lead Officer and LADOs for both adults and children in the region or nationally to ensure appropriate sharing of information and development of best practice

The Local Authority Safeguarding Adults Lead Officer role has distinct role in the following circumstances:

1. Where a Formal Enquiry is being undertaken within the safeguarding adults procedure, in relation to an allegation of abuse or neglect involving the actions of a 'person in a position of trust'.

- The role of the Safeguarding Adults Lead Officer is to provide management and oversight of the coordination of Formal Enquiries that are made about a 'person in a position of trust'.
- The role of the Safeguarding Adults Lead Officer is to ensure that risks potentially posed by the 'person in a position of trust' are appropriately managed, alongside the specific safeguarding needs of the adult at risk.

2. Where a concern has been raised about a 'person in position of trust' who may pose a risk of harm to adults with care and support needs. For example:

- a 'person in a position of trust' 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.
- a 'person in a position of trust' 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 needs.
- a 'person in a position of trust' is subject to a Formal Enquiry within the safeguarding adults procedure into allegations of abuse occurring in one setting. 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.

The role of the Safeguarding Adults Lead Officer in these situations is to agree a framework and process for any organisation to respond to concerns that a 'person in a position of trust' poses or may pose a risk to adults with care and support needs.

a) Managing allegations

Where a local authority has reasonable cause to suspect that an adult (aged 18 years or more) in its area (whether or not ordinarily resident there) -

- has needs for care and support (whether or not the authority is meeting any of those needs),
- is experiencing, or is at risk of, abuse or neglect, and
- as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

The local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case and, if so, what and by whom.

The Local Authority Safeguarding Adults Lead Officer will need to make enquiries (or cause them to be made) with relevant parties, such as the police and clinical commissioning groups and the Local Authority Designated Officer (LADO), to enable them to:

- understand the nature of the concerns
- share information
- assess the risk

The Local Authority Safeguarding Adults Lead Officer will need to review the findings of those enquiries, decide about disclosure, and agree the actions to be taken and by whom.

Where a Formal Enquiry is being undertaken within the safeguarding adults procedure, the role of the Local Authority Safeguarding Adults Lead Officer will be undertaken within the framework of the Formal Enquiry process. As such, the assessment and management of risk posed by a 'person in a position of trust' will be

an important element of Strategy Discussions/Meetings, the Formal Enquiry and Case Conference Discussions/ Meetings.

Where a Formal Enquiry is not being undertaken within the safeguarding adults procedure, the Local Authority Safeguarding Adults Lead Officer may, if required, convene a Managing Concerns 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 Care Quality Commission, other Safeguarding Adults Lead Officers, the Local Authority Designated Officer (LADO), commissioning, contracts, police and other relevant parties, as appropriate.

The following sections outline key responsibilities to be considered in responding to the concerns raised. These should be applied with proportionality and professional judgement taking into consideration the nature and seriousness of the concerns.

b) Informing the employer/organisation

In situations where there are concerns relating to the behaviour of a 'person in a position of trust' during the course of their work, the employer must be informed.

In circumstances where the concerns have arisen from the person's personal or private life, or in another work setting, 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.

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:

- 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

- The potential impact on an adult with care and support needs

Unless it puts the adult at risk or a child in danger, the 'person in a position of trust' should be informed that the allegation against them will be shared with their employer/student body. The person who is being considered as a possible source of risk should be offered a right to reply. Wherever possible, seek their consent to share information, advising what information will be shared, how and who with. Each case must be assessed individually as there may be rare cases where informing the person about details of the allegation may increase the risks to a child or adult at risk.

Wherever possible, the individual concerned should be given the 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 Local Authority Safeguarding Adults Lead Officer will need to ensure that the appropriate information has been shared with the organisation to enable them to assess risk, and review the suitability of the person working with adults with care and support needs, and any other actions required.

The Safeguarding Adults Board information sharing procedure should be referred to when making decisions to share information. Additional legal advice may also be required.

When sharing 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

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.

c) Working jointly with the police

If the concerns about the behaviour of a 'person in a position of trust' involve possible criminal offences to either an adult or child, liaison with the police is necessary to determine the need for a criminal investigation.

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'. 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/student body about criminal investigations relating to their employee/volunteer/student where this has been assessed as necessary and appropriate in a particular case.

Any such notifications are referred to as Common Law Police Disclosures.

The Local Authority Safeguarding Adults Lead Officer may need to liaise with the police where such disclosures, have been made, and the organisation to whom they have been made, to determine what additional actions are required, and by whom.

d) Allegations concerning children and young people

Where a concern has been raised about a 'person in position of trust' who may pose a risk of harm to his/her own children, or other children/young people in the course of their private life, information must be shared with children services without delay.

If the person may pose a risk to children/young people in the course of their work, paid or unpaid, information must be shared with the Local Authority Designated Officer (LADO) without delay.

e) Informing commissioner/contracts management

Where the concerns involve a person working in a commissioned service, information must be shared with the relevant commissioning/contracts team. 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.

In accordance with local arrangements, if the 'person in a position of trust' works for the NHS, the Clinical Commissioning Group Safeguarding Adults Lead Officer must

be informed, alternatively if the person works for the Police, the Police Safeguarding Adults Lead Officer must be informed.

f) Informing the Care Quality Commission (CQC)

Where a concern has been raised about a 'person in position of trust' who is employed or volunteers for a regulated service provider, the CQC must be informed. 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. This includes 'fitness' to practise and the employer's responsibility to safeguard adults at risk.

g) Informing other local authorities

Where a concern has been raised about a 'person in position of trust', who is employed, volunteers or is a student (paid or unpaid) in another local authority area, information must be shared with the relevant Safeguarding Adults Lead Officer for that local authority area (and if there is also a risk to children, the relevant LADO must also be informed).

7. Employer risk assessment and management process

The role of the Safeguarding Adults Lead Officer is to ensure that the employer/student body has appropriately assessed and responded to the presenting risk. The organisation must report the action it is taking to the Local Authority Safeguarding Adults Lead Officer and provide evidence as required.

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. Local contractual arrangements may be relevant.

Each organisation will have policies and procedures in place in relation to employees and volunteers and these will be their primary source of guidance. Risk management arrangements section below should be read alongside each organisation's own

policies and procedures to assist good practice in decision making. It should not be read or used as a substitute for the organisation's own policies and procedures.

a) Risk management arrangements

Whilst the Safeguarding Adults Lead Officer may provide advice and guidance, 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 Safeguarding Adults Lead Officer should be provided with an assurance of how the risk is being managed.

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.

b) 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 should also 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:

- 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.

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.

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 at additional risk.

c) 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 safeguarding adults 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.¹

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

¹ Care and Support, Statutory Guidance: Paragraph 14.100

- 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 children and or adults at risk and where needed detail the measures required to provide this reassurance
- consider the need to seek advice from their organisation's safeguarding adults 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.

d) 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:

- 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 Safeguarding Adults Lead Officer, confirmation should be provided to the Safeguarding Adults Lead Officer that the action has been completed. The Safeguarding Adults Lead Officer 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.

e) 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 Safeguarding Adults Lead Officer, confirmation should be provided to the Safeguarding Adults Lead Officer that the action has been completed. The Local Authority Safeguarding Adults Lead Officer 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 that the 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.

f) Training and supervision

Training and supervision may be relevant to managing aspects of a presenting risk. 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. Supervision is a formal process ensuring the performance of each member of staff is evaluated and reviewed so that, where necessary, learning and change can take place. Supervision is an important vehicle for meeting practice standards and 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.

g) Support for the 'person in a position of trust'

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 stressful for them. Alongside the duty of care towards the adult at risk, is the duty of care to the employee, volunteer or student concerned.

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

- support for them 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.

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. This must be agreed following consultation with the Safeguarding Adults Lead Officer.

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 Safeguarding Adults Lead Officer.

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 in a position of trust' may also wish to seek independent advice regarding employment issues. Such advice and support should be supplementary to that provided by the employer.

8. Information sharing

The Safeguarding Adults Board information sharing procedure should be referred to and followed with regards to the sharing of information that is justifiable and proportionate based on an assessment of the potential or actual harm to children or adults at risk.

- Where it is necessary to refer individual employees to the DBS and/or the relevant professional body, the employing organisation will be made aware 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.
- Organisations must ensure that allegations are investigated promptly in line with their internal allegations management policy.
- Referrals to the LADO, DBS and/or professional bodies must equally be made in a timely manner and made no later than five working days from when the case is concluded.
- In the interests of transparency and accountability, Safeguarding Adults Lead Officers will ensure clear recording of decisions and recommendations relating to the management of allegations involving staff.
- Commissioning organisations will build reporting requirements into their commissioning and contract specifications and arrangements to ensure that provider organisations promptly share information about incidents falling within the remit of this Framework with their commissioner.
- Local Authority commissioners should also embed reporting requirements into voluntary sector grant allocations.

- BSAB partners will provide information about how and to whom to report concerns 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.
- BSAB will maintain a register of Safeguarding Adults Lead Officers.
- BSAB will undertake on-going data collection to track activity relating to allegations against staff.
- Collated anonymised information will be available and included in the BSAB report.
- The requirements and standards outlined in this Framework will be added to current tools and adopted in relation to organisational self-audit of BSAB.
- All BSAB member organisations must ensure that they have an internal safeguarding policy and an allegations management procedure.
- Any commissioning, contract and grant allocation arrangements must include the above as routine.

9. Review

This framework will be reviewed as a result of changes to legislation and/or in relation to changes to Safeguarding policy and/or practice. A review of local arrangements will also be undertaken which will provide an opportunity to use learning to improve local safeguarding arrangements.

10. Links to additional information

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