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People in Position of Trust Protocol

1. Introduction

1.1 It is a requirement of the Care Act 2014 Statutory Guidance that Safeguarding Adults Boards should establish and agree a framework and process for any organisation to respond to allegations against anyone who works, (in either a paid or an unpaid capacity,) with adults with care and support needs. In this document this framework and process is referred to as the "Protocol".

1.2 This Protocol applies to all partner agencies of Central Bedfordshire and Bedford Borough Safeguarding Adults Board (SAB), and organisations commissioned to provide services by them, so they respond appropriately to allegations against people who, whether an employee, volunteer or student, paid or unpaid, works with or cares for adults with care and support needs. These individuals are known as People in a Position of Trust (PiPoT)

2. Scope

2.1 This Protocol must be followed in all cases by the organisation which first becomes aware of a concern. Working Together 2015 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 Adult Safeguarding Lead (ASL) and the LADO where information (whether current or historical) is identified in connection with:

2.1.1 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).

2.1.2 The PiPoT's life outside work i.e. concerning adults with care and support needs in the family or 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).

2.1.3 The PiPoT's life outside work i.e. concerning risks to children, whether the individual's own children or other children (for example where a woman is employed in a day centre for people with learning disabilities but her own children are subject to child protection procedures as a result of emotional abuse and neglect).

And the person has:

- Behaved in a way that has harmed or may have harmed an adult with care and support needs.
- Possibly committed a criminal offence against or related to an adult with care and support needs.



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- Behaved towards an adult with care and support needs in a way that indicates she/he is unsuitable to work with adults with care and support needs.
- Behaved in a way that has harmed children or may have harmed children which means their ability to provide a service to adults with care and support needs must be reviewed.
- May be subject to abuse themselves and as a consequence means 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.

2.2 Children - whilst this Protocol is concerned with potential harm to adults with care and support needs, if the allegation is such that there is a concern that the person may also pose a risk to children, then Children's Services must be informed. It is everyone's duty to refer any current and historical allegations of abuse against children to Children's Services, whether the person causing harm is a PiPoT or not. It is everyone's responsibility to report any allegations to the Safeguarding lead and LADO.

3. How Might a Concern About a PiPoT be identified?

Concerns about a PiPoT's behaviour may be identified by the following people/procedures (this list is not exhausting):

- Police intervention or investigation
- Whistleblowing disclosure
- Safeguarding adults enquiry
- Safeguarding children investigation
- Complaints
- Reports from members of the public
- Providers alerting commissioners of services
- Commissioner's contract monitoring activity
- **Or any other source of disclosure**

4. Whose Responsibility is it to Respond Where a PiPoT concern is identified?

4.1 Each member of the SAB should have an identified Adult Safeguarding Lead (ASL) or designated officer who is 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 organisations.

5. Historical Concerns

- Where Positions of Trust (PoT) information relates to historical abuse it is important to ascertain if the person is currently working with adults with care and support needs



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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.

6. Positions of Trust Process

6.1 Legal Context

Relevant legislation includes obligations under:

a) The Care Act 2014 and the supporting Statutory Guidance

6.2 The Guidance (see chapter 14) states:

s14.121Whilst 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 organisation) 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."

14.112 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

s 14.118 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



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made. This applies even if the person leaves their role to avoid a disciplinary hearing following a safeguarding incident and the employer/volunteer organisation 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.

6.3 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.

6.4 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.

6.5 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.
- Consider what support and advice they will make available to their staff or volunteers against whom the allegation has been made. Any PiPoT about whom there are concerns should be treated fairly and honestly. Their employer has a duty of care towards them.

6.6 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.



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7. Information sharing

7.1 Organisations have a duty to consider what support and advice they will make available to their staff or volunteers against whom allegations have been made. Any PiPoT about whom there are concerns should be treated fairly and honestly. Their employer has a duty of care towards them. In each case involving an allegation against a PiPoT, a balance has to be struck between the duty to protect people with care and support needs from harm or abuse and the effect upon individuals of information about them being shared (for example, upon the person's Article 8 Human Rights (the right to private and family life)).

7.2 When deciding whether to interfere with a person's Article 8 rights, each case must be judged on its own facts. The issue is essentially one of proportionality. Information is to be disclosed only if there is a "pressing need" for that disclosure. In considering proportionality, consideration must be given to general principles.

7.3 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.

8. Employers (statutory, voluntary and private) are expected to:

8.1 Ensure that appropriate actions are taken in line with this protocol and the multi-agency policies and procedures in order to safeguard adults with care and support needs.

8.2 Carry out immediate risk management and where appropriate HR procedures. Ensure the protection of adults with care and support needs is central to their decision making.

8.3 At the conclusion of any PiPoT enquiry consider if the findings demonstrate evidence of a theme or pattern in the context of past and historic PiPoT concerns; identify potential themes or system wide issues within the organisation; and ensure that appropriate action is taken by their organisation so that learning from past events is applied to reduce the risk of harm to adults with care and support needs in the future.

8.4 Consider that 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 organisation feels they would have dismissed the person based on the information they hold

8.5 Consider that employers, student bodies and voluntary organisations should have their own sources of advice (including legal advice) and/or HR in place for dealing with such concerns.



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9. Recording of PiPoT issues

9.1 The purpose of the PiPoT record-keeping is to:

- Enable accurate information to be given in response to any future request for a reference.
- Provide clarification in cases where a future DBS Disclosure reveals information from the police that an allegation was made but did not result in a prosecution or conviction.
- Prevent unnecessary re-investigation if an allegation resurfaces after a period of time.
- Enable patterns of behaviour which may pose a risk to adults with care and support needs to be identified.
- To assure the Safeguarding Adults Board that adults with care and support needs are protected from harm.

9.2 Organisations with responsibility for an investigation and management of PiPoT concerns must, as far as is practicable, contemporaneously document a complete account of the events, actions and any decisions taken, together with their rationale. This is to enable any objective person to understand the basis of any decision that was made, together with any subsequent action taken. Records of actions taken to investigate PiPoT concerns which have been found to be without substance must also be retained so as to build up any history.

9.3 Records may be used to prepare reports to the Safeguarding Adult Board (for example to identify trends and patterns or give assurance that adults with care and support needs have been protected). They might also be shared with any other relevant party to ensure the safety of adults with care and support needs.

9.4 Individuals (including a PiPoT who is the subject of the recording) are entitled to have access to their personal records whether they are stored electronically or manually. It is therefore important that information recorded, is fair, accurate and balanced.

9.5 Each organisation has a duty to establish internal processes.

9.6 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. In some circumstances reporting to the CQC may be considered.