



Lambeth Adult Safeguarding Board

# Managing allegations against People in a Position of Trust (PiPOT)

## Framework

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## Version Control

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## Documents superseded

<b>Reference</b>	<b>Document name</b>
	None

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## Executive Summary:

The Care Act does not set out any primary legal duties on the local authority associated with managing allegations against people who work in a position of trust with adults with care and support needs.

The care and support statutory guidance *s14.120 – 14.119* does however set out the expectation for local authorities *and their relevant partners (as per Section 6(7) of the Care Act 2014)* to have their own clear policies in line with those from the safeguarding adults board for dealing with allegations against people who work, in either a paid or unpaid capacity, with adults with care and support needs. **This framework has been designed to support partners in developing their own procedures and partners are encouraged to consult this when doing so.**

In summary, if an organisation is in receipt of information that gives cause for concern about a person in a position of trust, then that organisation should give careful consideration as to whether they should share the information with the person's employers (or student body or voluntary organisation) to enable them to conduct an effective risk assessment. The receiving organisation becomes the Data Controller as defined by the Data Protection Act 1998 (please refer to Section 4.0 Legal Framework).

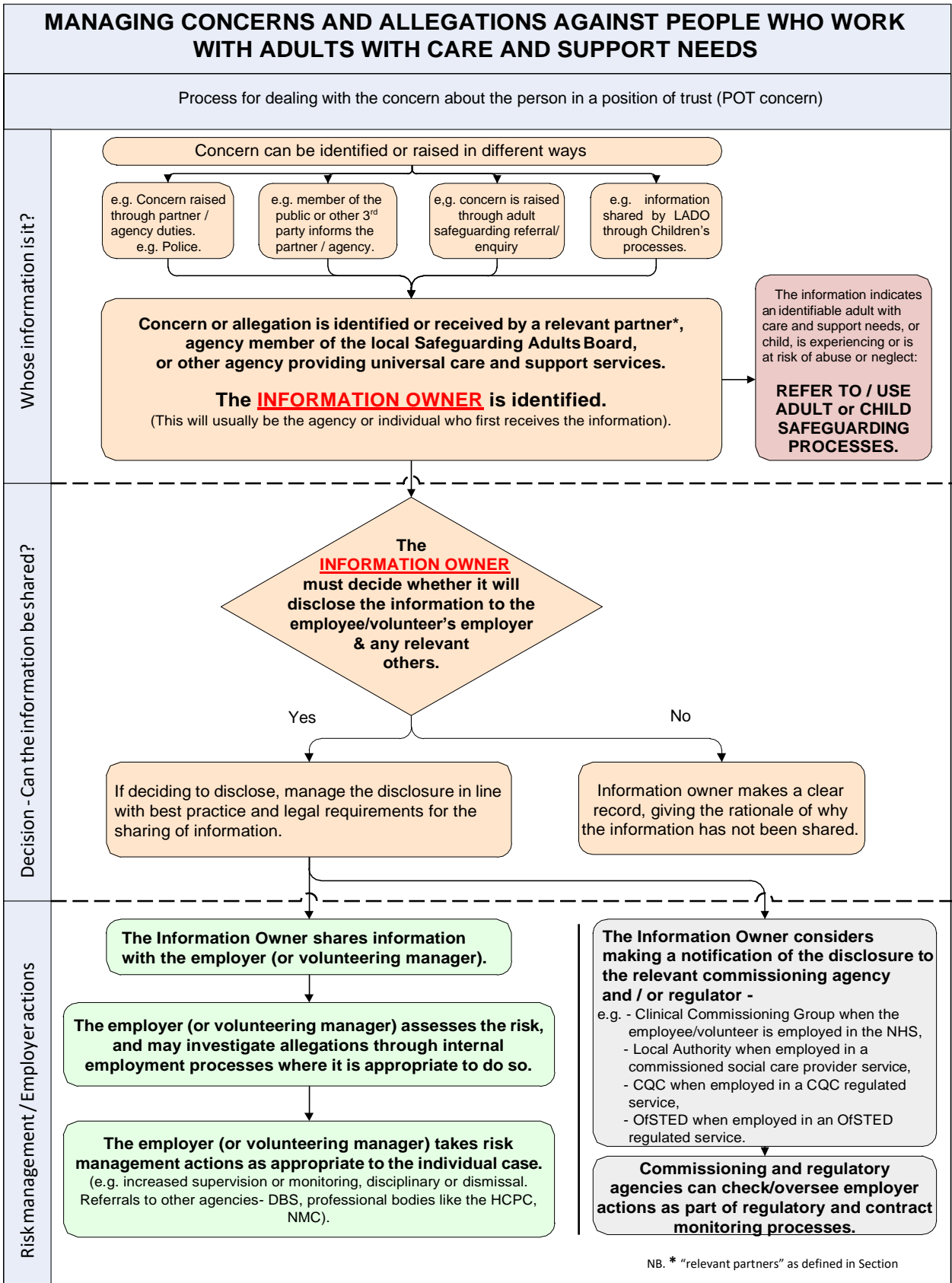
Partner agencies and the service providers they commission are individually responsible for ensuring that information relating to PiPoT concerns are shared and escalated outside of their organisation in circumstances where this is required. Such sharing of information must be lawful, proportionate and appropriate. Organisations are responsible for making the judgment that this is the case in every instance when they are the **data controller**.

If, following an investigation a Person in a Position of Trust is removed from their employment or role whether in an employed or volunteer capacity, by either dismissal or permanent redeployment to a non-regulated activity, because they pose a risk of harm to adults with care and support needs, (or would have, had the person not left first), then the employer (or student body or voluntary organisation) has a legal duty to refer the person to the Disclosure and Barring Service (DBS). It is an offence to fail to make a referral without good reason.

In addition, where appropriate, employers should report workers to the statutory and other bodies responsible for professional regulation and which may apply to the individual such as the Health and Care Professions Council, General Medical Council and the Nursing and Midwifery Council.

If a person subject to a PiPoT investigation attempts to leave employment by resigning in an effort to avoid the investigation or disciplinary process, the employer (or student body or voluntary organisation) is entitled not to accept that resignation and conclude whatever process has been utilised with the evidence before them. If the investigation outcome warrants it, the employer can dismiss the employee or volunteer instead and make a referral to the DBS. This would also be the case where the person intends to take up legitimate employment or a course of study.

# Adult PiPoT process – flowchart



## 1. Introduction

The Care Act 2014 requires Safeguarding Adult Boards (SABs) to establish and approve a framework and process for member organisations of the SAB to respond to allegations against people working with adults, in either a paid or an unpaid capacity, with care and support needs (i.e. those in a position of trust) should be notified and responded to adults at risk.

The guidance for 'Managing allegations against people in a position of Trust' is contained within section 14 of the [Care and Support Statutory Guidance](#) of the Care Act 2014. Other relevant legislation includes: Data Protection Act 1998/ European General Data Protection Regulation 2018 [GDPR]; Human Rights Act 1998 and employment legislation.

This document is directed at agencies and individuals who are "relevant partners" as defined in Section 6 of the [Care Act 2014](#), and/or who are members of the Lambeth Safeguarding Adults Board. This document should be read in conjunction with the Lambeth Safeguarding Adults Board Policy.

## 2. Purpose

The purpose of this framework is to provide recommended content and a suggested structure for responding to allegations against people in a position of Trust. Each organisation will however be different and will need to use this document to create a policy and procedure that reflects the needs of their organisation and their service users.

The enclosed content provides guidance on how to respond to instances where a relevant agency is alerted to information that may affect the suitability of a professional, or volunteer to work with (or continue to work with) an adult(s) at risk, where such information has originated from activity outside their professional or volunteer role and place of work. The alleged victim, in such circumstances, does not have to be an adult at risk, for example, it could be their partner or a child.

It includes instances when there is an allegation which does not necessarily directly involve an adult at risk, but may have risk implications in relation to the employment or volunteer work of a person in a position of trust (PiPoT).

The Framework is designed to ensure that if information is shared or disclosed it is done so in accordance with the law but in such a way that allows appropriate and proportionate enquiries to be made that ensures adults with care and support needs are protected and public confidence in services is maintained.

The Framework is not a substitute for, but may be used in conjunction with, other formal legal processes; for example: Child Protection, The management of allegations against people working with Children (Working Together 2015), Multi- Agency Risk Assessment Conference (MARAC) and Multi-agency public protection arrangements (MAPPA).

### 3. Scope

This framework and process applies to concerns and allegations about:

- a person who works with adults with care and support needs in a position of trust, whether an employee, volunteer or student (paid or unpaid); and,
- where those concerns or allegations indicate the person in a position of trust poses a risk of harm to adults with care and support needs.

Care Act guidance (s.14.123) state that examples of these concerns could include allegations that relate to a person who works with adults with care and support needs who has:

- behaved in a way that has harmed or may have harmed an adult or child;
- possibly 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.

This Framework applies whether the allegation relates to a current or an historical concern. Where the allegation or concern is historical, it is also 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.

The local authority's relevant partners, as set out in section 6 (7) of the Care Act (see appendix A), and those providing universal care and support services, should have clear policies in line with those from the safeguarding adults board for dealing with allegations against people who work, in either a paid or unpaid capacity, with adults with care and support needs. Such policies should make a clear distinction between an allegation, a concern about the quality of care or practice or a complaint.

This framework does not cover complaints or concerns raised about the quality of the care or professional practice provided by the person in a Position of Trust (PoT). Concerns or complaints about quality of care or practice should be dealt with under the relevant agency or individual complaint, competence or representations processes.

### 4. What is excluded from this framework?

This guidance **does not apply** if the allegations or concerns involve the person's suitability to work with children. If the person is working with children a referral must be made without delay to the Local Authority Designated Officer (LADO) {see section 8}.

People who pose a risk to children may also pose a risk to adults, and vice versa. Those leading on the PiPOT procedure, will need to work closely together to identify risks across both adults and children's services.

Section 14 of the Care Act Care and Support Statutory Guidance states:

Safeguarding is not a substitute for:

- Providers' responsibilities to provide safe and high quality care and support.
- Commissioners regularly assuring themselves of the safety and effectiveness of commissioned services.
- The Care Quality Commission (CQC) ensuring that regulated providers comply with the fundamental standards of care or by taking enforcement action.
- The core duties of the police to prevent and detect crime and protect life and property.

Therefore, careful consideration should be given to distinguish clearly between:

- A complaint about a professional or volunteer.
- Concerns raised about the quality of practice provided by the person in a position of trust, that do not meet the criteria for a safeguarding enquiry.

Other relevant bodies and their procedures should be used to recognise, respond to and resolve these issues.

## 5. Legal context and existing relevant statutory provision:

Section 42 of the Care Act 2014 outlines clear legal duties on the local authority to undertake enquiries in certain circumstances where adults with care and support needs are identified as experiencing or being at risk of abuse or neglect. It does not set out any primary legal duties on the local authority associated with managing allegations against people who work in a position of trust with adults with care and support needs.

The care and support statutory guidance *s14.120 – 14.119* does, however, outline expectations for local authorities *and their relevant partners (as in Section 6(7) of the Care Act 2014)* to have clear policies in line with those from the safeguarding adults board for dealing with allegations against people who work, in either a paid or unpaid capacity, with adults with care and support needs.

As such, this framework builds upon existing relevant statutory provision; particularly legislation that governs the lawful sharing of information, employer responsibilities to risk assess and manage the safety of their service and staff, and the Human Rights Act when balancing one right against another, or one person's rights against the interest of society. Any actions and interventions taken, to address concerns or allegations regarding a person in a position of trust, must be lawful and proportionate, and accord with any relevant statutory provision, for example, Data Protection Act 1998, Human Rights Act 1998 and employment legislation.

In particular however, if an organisation is in receipt of information, that gives cause for concern about a person in a position of trust, then that organisation should give careful consideration as to whether they should share the information with the person's employers, (or student body or voluntary organisation), to enable them to conduct an effective risk assessment.



The receiving organisation becomes the **Data Controller** as defined by the [Data Protection Act 1998](#) and [GDPR; Article 4](#) . Partner agencies and the service providers they commission, are individually responsible for ensuring that information relating to PiPoT concerns, are shared and escalated outside of their organisation in circumstances where this is required. Such sharing of information must be lawful, proportionate and appropriate. Organisations are responsible for making the judgment that this is the case in every instance when they are the **Data Controller**.

## 6. Roles and Responsibilities

The Lambeth Safeguarding Adults Board requires its partner agencies to be individually responsible for considering how they adopt and implement this framework. The Framework must be followed in all cases by the organisation which first becomes aware of a relevant concern or allegation, where information (whether current or historical) is identified.

### **Have a clear procedure in place:**

The Care Act 2014 Statutory Guidance requires that employers, student bodies and voluntary organisations should have a clear procedure in place setting out how concerns about a Person in a Position of Trust can be raised safely/anonymously (*including by service users*), how the process works including timescales, for investigation and what support and advice will be available to individuals against whom allegations have been made. There should also be mechanism in place to ensure compliance with this procedure.

### **Risk assess and taking action:**

Employers (or student body or voluntary organisation) are required to respond in individual cases where concerns are raised about people working in a position of trust, ensuring that the risk is assessed, investigated where appropriate through internal employment processes and that risk management actions are identified and implemented as appropriate to the individual case. The risk assessment must identify any potential risk to adults with care and support needs who use their services, and, if necessary, to take action to safeguard those adults. Where an employee is not aware that the employer has been notified, the timing of involving the employee in the process must be determined according to the impact on the risk.

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

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 might 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.

**Designated person:**

All organisations, partner agencies and the service providers they commission should identify a suitable designated person *within their own organisation* to oversee this area of work i.e. an Adult PiPoT Lead.

**Sharing of information:**

Dealing with such situations 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. Partner agencies and the service providers they commission are individually responsible for ensuring that information relating to adult PiPoT concerns are shared and escalated outside of their organisation where this is required and appropriate. Each case must be dealt with on its own facts and with reference to relevant legislation and Information Sharing Protocols particularly when making a decision to disclose confidential information, in order to demonstrate justification and proportionality.

**Liaise with police and monitor progress:**

All organisations, partner agencies and the service providers they commission, should ensure that there are appropriate arrangements in place to effectively liaise with the police and other agencies to monitor the progress of cases and ensure that they are dealt with as quickly as possible, consistent with a thorough and fair process.

**Disciplinary hearing processes and responsibilities:**

The need for, and timing of, a disciplinary hearing is a decision for the Senior Manager and HR and will depend on the specific circumstances of the situation. This decision will consider the decisions or findings within any police or safeguarding adults' process and how these may potentially affect decision making within the disciplinary process, and vice versa. Such decisions will need to be reached on a case-by-case basis. Disciplinary hearings will be focused on the conduct of the individual as an employee. Decisions reached should, however, also give due consideration to the Organisation's duty to Safeguarding Children and Adults at risk.

**Reporting to Professional bodies/Disclosure and Barring Service (DBS)**

Where a decision is taken to terminate an individual's contract or dismiss the individual (paid worker or unpaid volunteer) from work, the Organisation has a legal duty to make a referral to the Disclosure and Barring Service. Where it is necessary to refer individual employees to the DBS and/or the relevant professional body, these will be made promptly and as soon as possible once the investigation has concluded. This includes sharing with the professional body, the supporting evidence required as part of the referral. If you are unsure whether to refer to a professional body, you can check the referral criteria set out by the specific body that the person is registered with.

**Obtaining legal advice:**

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

**Lessons learnt**

At the conclusion of any PiPoT enquiries, organisations must consider whether the findings

demonstrate evidence of a theme or pattern in the context of past and historic PiPOT concerns. Potential themes or system wide issues within the organisation should be identified and appropriate action taken by the organisation so that learning from past events is applied to reduce the risk of harm in the future.

**Assurance to the Lambeth Safeguarding Adults Board:**

Each partner agency will be required to provide assurance to the Lambeth Safeguarding Adults Board that they have a PiPOT policy and procedure in place and these arrangements within their organisation are functioning effectively.

## 7. Information Sharing:

Decisions on sharing information must be justifiable and proportionate, based on the potential or actual harm to adults or children at risk and the rationale for decision-making should always be recorded.

When sharing information about adults, children and young people at risk between agencies it should only be shared:

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

There is a positive duty to share information and to seek the agreement of the subject about whom the information is being shared where it is appropriate, necessary and safe to do so.

There is both a power to share information and a duty to share information. The duty to share information with relevant partners to prevent abuse and crime is contained in the Care Act 2014 and Safeguarding Vulnerable Groups Act 2006. The power to share information is contained in a number of other information sharing frameworks outlined in appendix B.

While the Care Act 2014 provides a mechanism for information sharing, the guidance suggests that consent should be obtained where possible. However, if consent is not obtained but judged to be in the public interest to share, then the information can be shared.

## 8. Concerning Children:

Allegations or incidents with person/s working, paid or unpaid, with children aged 17 years or younger in a position of trust that meet the threshold below are to be referred to the LADO within 24 hours:

- Behaved in a way that has harmed a child, or may have harmed a child;
- Possibly committed a criminal offence against or related to a child; or
- Behaved towards a child or children in a way that indicates s/he would pose a risk of harm if they work regularly or closely with children

The LADO will plan with the employer the necessary risk assessment and safety plan, and how the relevant information is gathered.

Contact details are available on <https://www.lambethsaferchildren.org.uk/>

Tel: 020 7926 4679

Mobile: 07 720 828 700

Email:

[helpandprotection@lambeth.gov.uk](mailto:helpandprotection@lambeth.gov.uk)

[help.protection@lambeth.cjsm.net](mailto:help.protection@lambeth.cjsm.net)

Telephone: 02079263100

If the allegation is to be reported out of office hours *contact Emergency Duty Team* on 0300 303 8671 where a suspected crime the police on 101 or 999 where an emergency.

## 9. Role of Police

### The Care Act 2014 guidance

Section 14.115 states:

The Police and Crown Prosecution Service (CPS) should agree procedures with the local authority, care providers, housing providers, and the NHS/CCG to cover the following situations:

- action pending the outcome of the police and the employer's investigations
- action following a decision to prosecute an individual
- action following a decision not to prosecute
- action pending trial
- responses to both acquittal and conviction

### Common law police disclosures

The common law police disclosure (CLPD) provisions allow forces to proactively provide personal data or sensitive personal data to a third party using common law powers. Chief Officers should locally determine the implementation of CLPD provisions. The CLPD came into effect following the withdrawal of the notifiable occupation scheme (HOC 6/2006) by the home secretary on 10 March 2015.

## 10. 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.

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

If, following an investigation a person in a position of trust is removed, by either dismissal or permanent redeployment, to a non-regulated activity, because they pose a risk of harm to adults with care and support needs, (or would have, had the person not left first), then the employer (or student body or voluntary organisation), has a legal duty to refer the person to the (DBS).

It is an offence to fail to make a referral without good reason. In addition, where appropriate, employers should report workers to the statutory and other bodies, responsible for professional regulation such as the Health and Care Professions Council, Social Work England, General Medical Council and the Nursing and Midwifery Council.

If a person subject to a PiPoT investigation, attempts to leave employment by resigning in an effort to avoid the investigation or disciplinary process, the employer (or student body or voluntary organisation), is entitled **not** to accept that resignation and conclude whatever process has been utilised with the evidence before them. If the investigation outcome warrants it, the employer can dismiss the employee or volunteer instead and make a referral to the DBS. This would also be the case where the person intends to take up legitimate employment or a course of study.

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].

## 11. Role of 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 consult the professional regulatory body's guidance and consider when they should refer the matter to 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:

- make an interim suspension order while an enquiry is being undertaken
- 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](http://www.nmc-uk.org))
- Health and Care Professions Council ([www.hcpc-uk.org](http://www.hcpc-uk.org))
- Social Work England (<https://www.socialworkengland.org.uk/> )
- General Medical Council ([www.gmc-uk.org](http://www.gmc-uk.org))
- General Optical Society ([www.optical.org](http://www.optical.org))
- General Dental Society ([www.gdc-uk.org](http://www.gdc-uk.org))
- General Chiropractic Council ([www.gcc-uk.org](http://www.gcc-uk.org))
- Royal Pharmaceutical Society of Great Britain ([www.rpsgb.org.uk](http://www.rpsgb.org.uk))
- General Osteopathic Council ([www.osteopathy.org.uk](http://www.osteopathy.org.uk))

Notification to a professional regulatory body is the responsibility of the employer. Where this action has been agreed with the local authority Safeguarding Adult Manager (SAM) (as part of a formal S42 safeguarding process), confirmation should be provided to the lead officer that the action has been completed.

## 12. Typical Procedure in responding

### 1) When concerns about a Person in a Position of Trust are identified:

The person who becomes aware of the information relating to the concern or allegation is expected to:

- *Pass this information to a Senior Manager/Director (or the Allegations Manager (AM)/PiPOT Lead) within the Organisation*

*The AM/PiPOT Lead must:*

- Consider if the information indicates that *any immediate risk management actions* are needed
- Consider whether the allegation or concern *indicates a criminal offence* has occurred or may occur. If so, the allegation or concern must be reported to the Police; *early liaison with Police should take place* to agree next steps and to avoid contamination of evidence; if a criminal investigation is required, this will take primacy over an agency or organisation's internal investigation.
- Where the information indicates the person also works with and could pose a risk of *harm to children, refer to the Lambeth LADO (see section 8)*
- Make a decision whether the information should be *disclosed to the PiPOT's employer* and manage the disclosure in line with legal and best practice requirements for information sharing.
- *Record* the information and decisions clearly, including the *rationale for any decision* made.
- If the allegation relates to alleged abuse or neglect of an adult(s) at risk (as per S42 criteria), then a safeguarding adults concern should be raised with the local authority where the abuse is occurring.
- Allegations against people who work with adults should not be dealt with in isolation. Any action necessary to address corresponding welfare concerns in relation to an adult involved should be taken without delay and in a coordinated manner.

### 2) When an investigation is underway

- It is essential that every effort be made to *maintain confidentiality* and manage communications while an allegation against an employee is being investigated
- The *initial response must be to assess risk* and draw up a risk management plan which is likely to involve a meeting which includes the following people:
  - Senior Manager of Employee (*line manager may sometimes not be best to involve*)
  - Senior Manager within Organisation/Adult Safeguarding Lead/Allegations Manager/PiPOT Lead
  - Human Resources Department Manager (HR)
  - Employee (*when appropriate*)
  - Employees' representative e.g. union (*when appropriate*)

- If an allegation concerns the actions of a professional, or volunteer which *relate to alleged abuse or neglect of an adult at risk (S42 criteria met)* and this amounts to a safeguarding enquiry, then such an *allegation should be dealt with in the same way however alongside an adult safeguarding enquiry* (with the local authority where the abuse is occurring/occurred).
- *If an investigation into an allegation is being carried out by another organisation that is not the person's employer, then that organisation must determine when to notify the employer.* If the initial action is to simply check the details of the allegation, the organisation who is the data owner, may determine that it is not appropriate to notify the employer (e.g. no clear risk to share the information). Once the employer is notified about an allegation that is being investigated by another organisation, the employer must consider what if any, additional investigation it may need to carry out itself. It is sensible that the two processes be aligned as closely as possible so as to ensure risks are appropriately/jointly managed.
- **If the employer is conducting the investigation, then this will be led by HR's procedures which should be in line with the organisation's disciplinary procedures.**
- The Police/DBS must be notified *where appropriate*.
- The member of staff should be provided with appropriate support throughout the investigation

### 3) **Once an investigation is complete**

- The outcome of the disciplinary investigation must be feedback to the staff member and where relevant, the person(s) at risk and other involved parties
- Consideration must be paid to supporting the member of staff through integration back into the workplace should this be appropriate post investigation. This is particularly relevant where the allegation has been found to be false/unfounded. Ongoing support for the member of staff should be offered through Occupational Health.
- Where the allegation has been founded, and the employee dismissed, a referral to DBS and relevant professional body (where relevant) *must be made*.



### 13. Key Definitions:

#### **Data Subject:**

Both the Data Protection Act 1998 and the GDPR define Data Subject as an individual who is the subject of personal data.

In other words, the data subject is the individual whom particular personal data is about. The Act does not count, as a data subject, an individual who has died or who cannot be identified or distinguished from others.

**Data Controller:** a person who (either alone or jointly or in common with other persons) determines the purposes for which and the way any personal data are, or are to be, processed.

In other words, the Data Controller is the organisation or individual who first becomes aware of the allegation or concern. The Data Controller is the owner of the information and has responsibility for taking appropriate action i.e. risk assess and decide whether disclosure to other bodies should be made.

It is the Data Controller that must exercise control over the processing and carry data protection responsibility for it. The Data Controller must be a “person” recognised in law, that is to say:

- individuals
- organisations; and
- other corporate and unincorporated bodies of persons.

Data Controllers will usually be organisations, but can be individuals, for example self-employed consultants. An individual given responsibility for data protection in an organisation will be acting on behalf of the organisation, which will be the Data Controller.

In relation to Data Controllers, the term jointly is used where two or more persons (usually organisations), act together to decide the purpose and manner of any data processing. The term in common applies where two or more persons share a pool of personal data that they process independently of each other. Data Controllers must ensure that any processing of personal data, for which they are responsible, complies with the act. Failure to do so risks enforcement action, even prosecution and compensation claims from individuals.

**Data Processor** - in relation to personal data, means any person (other than an employee of the Data Controller) who processes the data on behalf of the Data Controller.

## 14. References:

Information Commissioner's Office – Data Controllers and Data Processors: What Difference is and What the Governance Implications are. Data Protection Act (<https://ico.org.uk/media/for-organisations/documents/1546/data-controllers-and-data-processors-dp-guidance.pdf>)

Information Commissioner's Officer – Guide to the General Data Protection Regulation (GDPR) ([Guide to the General Data Protection Regulation \(GDPR\)](#))

Information Commissioner's Officer – Guide to the Data Protection Act (<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>)

Information Commissioner's Officer – Under the GDPR, the data protection principles set out the main responsibilities for organisations. (<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/principles/>)

West Midlands Adult Position of Trust Framework: A Framework and Process for responding to allegations and concerns against people working with adults with care and support needs (2017)

SCIE: Seven golden rules for information-sharing  
<https://www.scie.org.uk/care-act-2014/safeguarding-adults/sharing-information/seven-golden-rules.asp>

Common Law Police Disclosure Guidance  
<https://www.gov.uk/government/publications/common-law-police-disclosure>

HM Government: Information Sharing: Guidance for practitioners and managers (2009)  
<https://www.gov.uk/government/publications/safeguarding-practitioners-information-sharing-advice>

## Appendix A

### Section 6(7) of the Care Act: Local Authority relevant partners:

The local authority's relevant partners, as set out in section 6 (7) of the Care Act, and those providing universal care and support services, should have clear policies in line with those from the safeguarding adults board for dealing with allegations against people who work, in either a paid or unpaid capacity, with adults with care and support needs. Such policies should make a clear distinction between an allegation, a concern about the quality of care or practice or a complaint.

According to Section 2 of the Care Act 2014 a local authority must co-operate, in the exercise of its functions under this Part, with such other persons as it considers appropriate who exercise functions, or are engaged in activities, in the authority's area relating to adults with needs for care and support or relating to carers.

Section 3 of the Care Act 2014 provides examples of persons with whom a local authority may consider it appropriate to co-operate for the purposes of subsection 2:

- (a) a person who provides services to meet adults' needs for care and support, services to meet carers' needs for support or services, facilities or resources of the kind referred to in section 2(1);
- (b) a person who provides primary medical services, primary dental services, primary ophthalmic services, pharmaceutical services or local pharmaceutical services under the National Health Service Act 2006;
- (c) a person in whom a hospital in England is vested which is not a health service hospital as defined by that Act;
- (d) a private registered provider of social housing.

According to Section 6(7) of the Care Act 2014 each of the following is a relevant partner of a local authority:

- (a) where the authority is a county council for an area for which there are district councils, each district council;
- (b) any local authority, or district council for an area in England for which there is a county council, with which the authority agrees it would be appropriate to co-operate under this section;
- (c) each NHS body in the authority's area;
- (d) the Minister of the Crown exercising functions in relation to social security, employment and training, so far as those functions are exercisable in relation to England;
- (e) the chief officer of police for a police area the whole or part of which is in the authority's area;
- (f) the Minister of the Crown exercising functions in relation to prisons, so far as those functions are exercisable in relation to England;
- (g) a relevant provider of probation services in the authority's area;
- (h) such person, or a person of such description, as regulations may specify.

## Appendix B Information sharing frameworks:

### Confidentiality:

The rules on confidentiality, privacy and the need to safeguard personal information arise from both legislation and case law. These enshrine the need for fair and ethical treatment of information where there is a duty of confidence, issues of privacy or where personal information is involved.

The common law duty of confidentiality is not a written Act of Parliament. It is “common” law. This means that it has been established over a period of time through the Courts. It recognises that some information has a quality of confidence, which means that the individual or organisation that provided the information has an expectation that it will not be shared with or disclosed to others.

For information to have a quality of confidentiality it is generally accepted that:

- it is not “trivial” in its nature,
- it is not in the public domain or easily available from another source,
- it has a degree of sensitivity,
- it has been communicated for a limited purpose and in circumstances where the individual or organisation is likely to assume an obligation of confidence. For example information shared between a solicitor/client, health practitioner/patient.

In such circumstances the information should only be disclosed:

- with the permission of the provider; or,
- if the confidentiality requirement is overridden by legislation; or,
- if an effective case ‘that it is the public interest’ can be made.

### Data Protection Act 1998 and the GDPR:

The Data Protection Act (DPA) requires anyone who handles the personal information of living individuals to comply with eight data protection principles. It also gives individuals rights over their personal information. In assessing whether you are handling personal data within the law, these principles are critical and the most important of them are:

- the 1<sup>st</sup> Principle, which requires processing to be fair and lawful and requires criteria to be met to achieve this;
- the 2<sup>nd</sup> Principle, which requires personal data to be processed for one or more lawful purposes;
- the 3<sup>rd</sup> Principle, which requires personal data to be protected against unauthorised or unlawful processing and against accidental loss, destruction or damage.

The [Information Commissioners Office](#) (ICO) upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The ICO publishes a range of information on their website to understand the law around data control and the data sharing code of practice.

The [Data Protection Act 1998](#) and the [GDPR](#) (see Appendix 1) requires anyone handling personal information to comply with the principles set out in the Acts:

- the information processed must be fair and lawful; and
- personal data must be kept in a secure and confidential place.

#### **The Crime and Disorder Act 1998:**

The Crime and Disorder Act 1998 provides that “Any person may disclose information to a relevant authority under Section 115 of the Crime and Disorder Act 1998, ‘where disclosure is necessary or expedient for the purposes of the Act (reduction and prevention of crime and disorder)’. ‘Relevant authorities’, broadly, are the police, local authorities, health authorities (clinical commissioning groups) and local probation boards”

#### **Human Rights Act 1998:**

Human rights are freedoms which belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society.

In cases of concern or allegations against people who care for adults with care and support needs the Act is relevant when decisions have to be made which consider balancing one right against another, or one person’s right against the interest of society. These rights are fundamental and the most important of them are:

- Article 6: Right to a fair trial – A person has a right to a fair and public hearing within a reasonable amount of time. This applies both to criminal charges against them and to cases concerning their civil rights and obligations. If it is a criminal charge, the person is presumed innocent until proven guilty according to law and has certain guaranteed rights to defend themselves.
- Article 7: No punishment without the law – A person normally has the right not to be found guilty of an offence arising out of actions which at the time they committed them were not criminal.
- Article 8: Right to respect for private and family life - A person has the right to respect for their family life, their home and their correspondence. This right can be restricted only in specified circumstances.

#### **The Information Commissioners Office (ICO):**

The [Information Commissioners Office](#) (ICO) upholds information rights in the public interest. For further information about the law relating to data use/control can be found on their website.

### **Social Care Institute For Excellence (SCIE):**

Seven golden rules for information-sharing:

- **Remember that the Data Protection Act is not a barrier to sharing information** but provides a framework to ensure that personal information about living persons is shared appropriately.
- **Be open and honest** with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be, shared, and seek their agreement, unless it is unsafe or inappropriate to do so.
- **Seek advice** if you are in any doubt, without disclosing the identity of the person where possible.
- **Share with consent where appropriate** and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.
- **Consider safety and wellbeing:** base your information-sharing decisions on considerations of the safety and wellbeing of the person and others who may be affected by their actions.
- **Necessary, proportionate, relevant, accurate, timely and secure:** ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up to date, is shared in a timely fashion, and is shared securely.
- **Keep a record** of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

### **The Safeguarding Vulnerable Adults Act 2006:**

In addition to the provisions within the Care Act 2014, The Safeguarding Vulnerable Adults Act 2006 places a duty on those providing regulated activities (s.5) to refer to the Disclosure and Barring Service (DBS) anyone who has been dismissed or removed from their role because they are thought to have harmed, or pose a risk of harm to, a child or adult with care and support needs. This applies even if they have left their job and regardless of whether they have been convicted of a related crime.

### **Common Law Police Disclosure Guidance:**

Regarding the question as to what information the police can disclose to the employer one must look to the 'Common Law Police Disclosure' guidance issued by the Home Office. It has been described as providing solid arrangements for the sharing of information in order to protect the interests of the subject and the public. Information can be shared by the police where there is an information sharing agreement. If such agreement does not exist locally then police do have limited powers to share under the Crime and Disorder Act 1998 for the purposes of crime reduction. The police are under no obligation to share information with the employer particularly if they are not involved or no crime has been committed.

