

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.**

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Summary – about this document

The Care Act 2014 introduced a single new statute to replace most existing adult social care law. The care and support statutory guidance¹ formalised the expectations on local Safeguarding Adults Boards to establish and agree a framework and process for how allegations against people working with adults with care and support needs (i.e. those in a position of trust) should be notified and responded to.

This document provides a high-level, overarching framework for the West Midlands region on the approach and process to follow when responding to allegations and concerns relating to people who work in a Position of Trust (PoT) with adults who have care and support needs.

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 their local Safeguarding Adults Board.

This document should be read alongside the West Midlands Adult Safeguarding Policy and Procedures², and relevant local information sharing protocols.

It is for local Safeguarding Adults Boards to decide whether to adopt this framework formally, and how to implement this framework to meet their local need and service arrangements. It is recognised that local operational arrangements and service structures that manage this area of work differ across the region. To support this, the WM Adult Safeguarding Editorial Group has produced a toolkit that local Safeguarding Adults Boards can use or adapt as required to support local implementation. Amongst other items, the toolkit contains a sample protocol that can be adapted by individual Safeguarding Adults Boards to formalise local agreement among SAB member agencies to operate this framework, and to reflect relevant local roles and responsibilities, and local reporting and assurance arrangements. The toolkit also contains some best practice guidance to consider when deciding whether to disclose information.

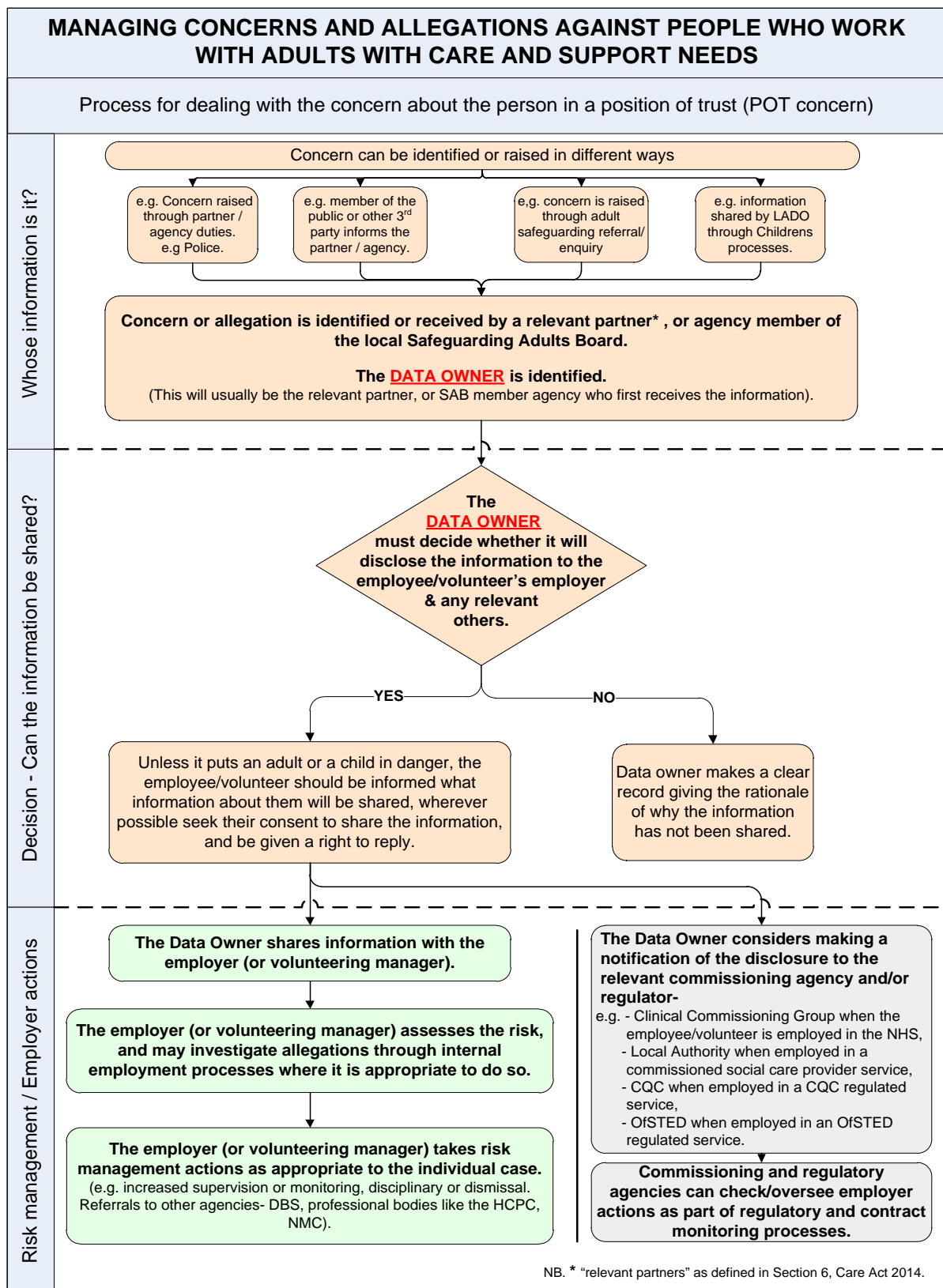
Contents.

Flowchart	-	Adult PoT Process	Page 3
Section 1	-	Background	Page 4
Section 2	-	Scope	Page 5
Section 3	-	Principles	Page 5
Section 4	-	Legal Framework	Page 6
Section 5	-	Key roles and responsibilities	Page 8

¹ Care and Support statutory guidance: Chapter 14. (updated March 2016)

² Adult Safeguarding: Multi-agency policy and procedures for the protection of adults with care and support needs in the West Midlands, WM Adult Safeguarding Editorial Group, 2016.

Fig.1. Adult PoT process – flowchart -



1. Background.

- 1.1. The Care Act 2014 (implemented in April 2015) introduced a single new statute to replace most existing adult social care law. The care and support statutory guidance³ formalised the expectations on local safeguarding adults boards to establish and agree a framework and process for how allegations against people working with adults with care and support needs (i.e. those in a position of trust) should be notified and responded to.
- 1.2. While the Care Act 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 (Care Act section 42), 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.
- 1.3. The care and support statutory guidance does, however, set out the expectation for local authorities and their relevant partners, as set out in section 6(7) of the Care Act, 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.
- 1.4. 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 that a person in a position of trust poses a risk of harm to adults with care and support needs 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.
- 1.5. 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.
- 1.6. The Care Act 2014 Statutory Guidance also requires that Employers, student bodies and voluntary organisations should have clear procedures in place setting out the process, including timescales, for investigation and what support and advice will be available to individuals against whom allegations have been made⁴.
- 1.7. The Care Act 2014 Statutory Guidance also requires if an organisation removes an individual (paid worker or unpaid volunteer) from work with an adult with care and support needs (or would have, had the person not left first) because the person poses a risk of harm to adults, the organisation must make a referral to the Disclosure and Barring Service. It is an offence to fail to make a referral without good reason⁵.

³ Care and Support statutory guidance: Chapter 14. (updated March 2016)

⁴ Paragraph 14.126 Care and Support Statutory Guidance

⁵ Paragraph 14.127 Care and Support Statutory Guidance

2. Scope.

2.1. 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**.

These concerns or allegations could include, for example, that the person in a position of trust 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.

2.2. This Framework applies whether the allegation relates to a current or an historical concern. Where the allegation or concern is historical, it is important to ascertain if the person is currently working with adults with care and support needs or children and if that is the case, to consider whether information should be shared with the current employer.

2.3. The policy 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.

3. Principles.

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

3.2. As with all adult safeguarding work the government six principles should inform this area of activity:

- Empowerment - People being supported and encouraged to make their own decisions and informed consent
- Prevention - It is better to take action before harm occurs
- Proportionality - The least intrusive response appropriate to the risk presented
- Protection - Support and representation for those in greatest need.
- Partnership - Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse.
- Accountability - Accountability and transparency in safeguarding practice.

3.3. Mental capacity-

All adults have the full legal capacity to make decisions for themselves, unless it can be shown that they lack mental capacity to make decisions for themselves at the time a decision needs to be made. Individuals must be given all appropriate help and support to enable them to make their own decisions or to maximise their participation in any decision-making process.

4. Legal framework.

4.1. Confidentiality

4.1.1. 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.

4.1.2 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.

4.2. Data Protection Act 1998.

4.2.1. 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 1st Principle, which requires processing to be fair and lawful and requires criteria to be met to achieve this;

- the 2nd Principle, which requires personal data to be processed for one or more lawful purposes;
- the 3rd Principle, which requires personal data to be protected against unauthorised or unlawful processing and against accidental loss, destruction or damage.

4.2.2. 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. <https://ico.org.uk/>

4.3. The Crime and Disorder Act 1998

4.3.1. 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.

4.4. Human Rights Act 1998

4.4.1. 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.

4.4.2. 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.

5. Key roles and responsibilities.

5.1. The Data Owner

5.1.1. The owner of the information relating to the concern or allegation is expected to -

- Consider if the information indicates that any immediate risk management actions are needed, or referrals into adult or children safeguarding processes,
- 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,
- Refer to the relevant Local Authority LADO where the information indicates the person also works with and could pose a risk of harm to children,
- Make a decision whether the information should be disclosed to the person in a PoT's employer, and manage the disclosure in line with legal and best practice requirements for information sharing,
- Where a disclosure is made, notify the relevant service commissioners and regulatory agencies,
- Record the information and decisions clearly, including the rationale for any decision made.

5.2. Employers, student bodies, or voluntary organisations

5.2.1. Any employer, student body, or voluntary organisation who is responsible for a person in a PoT where there is a concern or allegation raised are expected to-

- Respond in individual cases where concerns are raised about people working in a PoT, 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,
- Where appropriate, make notify and refer to external agencies; to the CQC (where the person in a PoT is working or volunteering in a CQC regulated organisation), statutory and other bodies responsible for professional regulation (such as the General Medical Council and the Nursing and Midwifery Council, The Charity Commission) and the DBS,
- Provide feedback at regular intervals to the relevant Local Authority (if there is a related safeguarding enquiry) and to their commissioning agency (if they have one),
- Ensure the safety and protection of adults with care and support needs is central to their decision making,
- Ensure their organisation has a range of policies and procedures that will support their decisions,

- Ensure all safeguarding concerns that result from a concern about a PoT are reported,
- Share information in line with these procedures where it is known the person in a PoT also has other employment or voluntary work with adults with care and support needs or children,
- If an organisation removes an individual (paid worker or unpaid volunteer) from work with an adult with care and support needs (or would have, had the person not left first) because the person poses a risk of harm to adults, the organisation must make a referral to the Disclosure and Barring Service. It is an offence to fail to make a referral without good reason⁶.
- At the conclusion of any PoT enquiries, consider if the findings demonstrate evidence of a theme or pattern in the context of past and historic PoT 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.

5.3. Service commissioners and regulators

5.3.1. Service commissioners and regulators are expected to -

- Use their contract compliance and regulatory processes to ensure that service providers have the right internal policy and procedural frameworks, and respond appropriately to manage risk in individual cases,
- Monitor the activities of commissioned services in their compliance of this Framework.

⁶ Paragraph 14.127 Care and Support Statutory Guidance