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is everybody's
business**

East Riding Safeguarding Adults Board

Procedure for managing allegations made against People in a Position of Trust (PiPoT)

Approved December 2017

INTRODUCTION

1. Duties as an employer and an employee

1.1 This guidance is about managing cases of allegations that might indicate a person in local authority or private / independent employment or as part of a voluntary organisation would pose a risk of harm if they continue to work in regular or close contact with adults in their present position, or in any capacity. It should be used in respect of all cases in which it is alleged that an adult member of staff, including volunteers, carers and or anyone working with an adult in either a paid or unpaid capacity, has:

- behaved in a way that has harmed an adult or child, or may have harmed an adult or child.
- committed a criminal offence against or related to an adult or child.
- behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs.
- Been or is subject of a formal safeguarding enquiry into allegations of abuse or neglect and 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.

1.2 The above behaviours should be considered within the context of the ten types of adult abuse as identified in the Care Act 2014 which are:

- Physical
- Sexual
- Psychological
- Neglect
- Self-neglect
- Domestic Abuse
- Financial and material abuse
- Modern Slavery
- Discriminatory
- Organisational

1.3 Consideration should also be given to other acts or behaviours such as Female Genital Mutilation (FGM) and Radicalisation.

1.4 This guidance relates to members of staff who are currently working in any setting regardless of whether the setting is where the alleged abuse took place. Allegations against a person who is no longer working with adults should be referred to the police, as should historical allegations of abuse.

1.5 As well as the responsibility for the safety of adults with care and support needs, employers also have a duty of care to their employees. They should ensure they provide effective support for anyone facing an allegation and provide the employee with a named contact if they are suspended. It is essential that any allegation of abuse made against a member of staff or volunteer is dealt with very quickly, in a fair and consistent way that provides effective protection for the adult and, at the same time, supports the person who is the subject of the allegation.

2. Initial considerations

2.1 In the first instance, the Manager of the staff member or volunteer who is alleged to have caused the harm should immediately discuss the allegation with the Local Authority Safeguarding Adults Team Manager. The purpose of an initial discussion is for the SAT Manager to consider the nature, content and context of the allegation and agree a course of action. The SAT Manager may also:

- Request the Manager raising the concern to complete a Safeguarding Adults Concerns form.
- Request the Manager raising the concern to provide or obtain relevant additional information, such as previous history, whether the adult or their family making the allegations have made similar allegations previously, and the alleged perpetrator's current contact with adults or children.
- Inform the Police if it is believed there has been any criminal activity.

2.2 All allegations are taken seriously and any previous allegations made about the person in a position of trust will be noted but should not cloud the decision making in respect of this specific allegation being reported.

2.3 If the allegation has already been raised with the police the SAT Manager should be notified immediately of this by the Police Officer leading the investigation. The Police Officer should also update the SAT Manager of any actions/decisions which have already been made by the police.

2.4 The initial sharing of information and evaluation may lead to a decision that no further action is to be taken in regard to the individual facing the allegation or concern; in which case this decision and a justification for it should be recorded by both the Manager and the SAT Manager and agreement reached on what information should be put in writing to the individual concerned and by whom. The Manager should then consider with the SAT Manager what action should follow, both in respect of the individual and those who made the initial allegation.

2.5 The manager/employer should inform the accused person about the allegation as soon as possible after consulting the SAT. It is extremely important that the manager provides the employee with as much information as possible at that time. However, where a strategy discussion is needed, or police or other services need to be involved, the manager should not disclose any information to the accused person until those agencies have been consulted, and have agreed what information can be disclosed to the accused person. Employers must consider carefully whether the circumstances of a case warrant a person being suspended from the place at which they work/volunteer or whether alternative arrangements can be put in place until the allegation or concern is resolved.

2.6 All options to avoid suspension should be considered prior to taking that step (see further information on suspension which follows).

2.7 Where it is clear that an investigation by the police or Adult Social Care is unnecessary, or the strategy discussion or initial evaluation decides that this is the case, the SAT and the individuals employer should discuss next steps. In those circumstances, the options open to the employer depend on the nature and circumstances of the allegation and the evidence and information available. This will range from taking no further action to dismissal or a decision not to use the person's services in future or to discuss making changes to the person's duties.

Suspension should not be the default position: an individual should be suspended only if there is no reasonable alternative.

3. Undertaking a S42 safeguarding enquiry

3.1 In some cases, further enquiries will be needed to enable a decision about how to proceed. This may then lead to a full S42 enquiry under the Care Act 2014 if all the following conditions apply. The adult who is at risk of harm:

- Is over 18
- Has needs for care and support (whether or not the local authority is meeting any of those needs)
- Is experiencing, or at risk of harm, abuse or neglect; and
- As a result of those care & support needs is unable to protect themselves from either the risk of harm, or the experience of abuse or neglect.

3.2 If all the above criteria is met the local authority has a duty to undertake (or cause others to undertake) a S42 enquiry following the SAB multi-agency procedures.

3.3 In straightforward cases, the S42 enquiry may be undertaken by the employing organisation. However, in other circumstances, such as lack of appropriate resource within the place of employment, or the nature or complexity of the allegation, the enquiry will be undertaken by the local authority or another agency appointed by the local authority.

3.4 The S42 enquiry for a person in a position of trust should start with a strategy planning meeting so that an immediate assessment and management of risk can be considered together with any required actions.

3.5 All actions taken, decisions made and recommendations should be clearly recorded/minuted and any further actions should be included in the safeguarding outcome report.

4. Supporting those involved

4.1 In cases where an adult may have suffered significant harm, or there may be a criminal prosecution, the local authority, or the police as appropriate, should consider what support the adult may need and whether they will need the support of a family member, friend or appointed advocate.

4.2 Employers have a duty of care to their employees and should act to manage and minimise the stress inherent in the allegations process. Support for the individual who is alleged to have caused the harm is vital to fulfilling this duty. Individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action, unless there is an objection by the local authority or the police, or where this is likely to cause further harm. The individual should be advised to contact their trade union representative, if they have one, or they may wish to obtain legal advice. They should also be given access to welfare counselling or medical advice where this is provided by the employer.

4.3 The employer should appoint a named representative to keep the person who is the subject of the allegation informed of the progress of the case and consider what other support is appropriate for the individual. Where available this may include support via the occupational

health or other employee welfare arrangements. Particular care needs to be taken when employees are suspended to ensure that they are kept informed of both the progress of their case and current work-related issues. In such cases a single point of contact at the work place or service will be identified for the employee to seek information and guidance. Social contact with colleagues and friends should not be prevented unless there is evidence to suggest that such contact is likely to be prejudicial to the gathering and presentation of evidence.

5. Confidentiality

5.1 It is extremely important that when an allegation is made, the employer makes every effort to maintain confidentiality and guard against unwanted publicity while an allegation is being investigated or considered.

The employer should take advice from the SAT or police to agree the following:

- who needs to know and, importantly, exactly what information can be shared;
- how to manage speculation, leaks and gossip;
- what, if any information can be reasonably given to the wider community to reduce speculation; and
- how to manage press interest if and when it should arise – refer to the approved SAB Communications Strategy.

6. Managing the situation and exit arrangements

Resignations and ‘settlement agreements’

6.1 If the accused person resigns, or ceases to provide their services, this should not prevent an allegation being followed up in accordance with this guidance. **A referral to the DBS *must* be made, if the criteria are met.** If the accused person resigns or their services cease to be used and the criteria are met it will not be appropriate to reach a settlement/compromise agreement. A settlement/compromise agreement which prevents the employer from making a DBS referral when the criteria are met, would likely result in a criminal offence being committed as the employer would not be complying with its legal duty to make the referral.

6.2 It is important that every effort is made to reach a conclusion in all cases of allegations bearing on the safety or welfare of adults with care and support needs, including any in which the accused person refuses to cooperate with the process. Wherever possible they should be given a full opportunity to answer the allegation and make their representations as relevant. The process of recording the allegation and any supporting evidence, and reaching a judgement about whether it can be substantiated on the basis of all the information available, should continue even if that cannot be done or the accused does not cooperate. It may be difficult to reach a conclusion in those circumstances, and it may not be possible to apply any disciplinary sanctions if a person’s period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

6.3 ‘Settlement agreements’ (sometimes referred to as compromise agreements), by which a person agrees to resign if the employer agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference, should not be used in cases of refusal

to cooperate or resignation before the person's notice period expires. Such an agreement will not prevent a thorough police investigation where that is appropriate.

7. Record keeping

7.1 It is recognised that adults with care and support needs may make allegations which are later found to have no substance. Details of allegations that are found to have been malicious, unintended or unfounded should be removed from personnel records. However, for all other allegations, it is important that a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, and a note of any action taken and decisions reached, is kept on the confidential file of the accused person, and a copy provided to the person concerned.

7.2 The purpose of the record is to enable accurate information to be given in response to any future request for a reference, where appropriate. It will provide clarification in cases where future DBS checks reveal information from the police about an allegation that did not result in a criminal conviction and it will help to prevent unnecessary re-investigation if, as sometimes happens, an allegation re-surfaces after a period of time. The record should be retained at least until the accused has reached normal pension age or for a period of 10 years from the date of the allegation if that is longer.

8. References

8.1 Cases in which an allegation was proven to be false, unsubstantiated or malicious should not be included in employer references. A history of repeated concerns or allegations which have all been found to be false, unsubstantiated or malicious should also not be included in any reference.

9. Timescales

9.1 It is in everyone's interest to resolve cases as quickly as possible consistent with a fair and thorough investigation. All allegations should be investigated as a priority to avoid any delay. The time taken to investigate and resolve individual cases depends on a variety of factors including the nature, seriousness and complexity of the allegation, but the following targets should be achieved in all but truly exceptional cases. It is expected that from the time the allegation is raised with the SAT Manager:

- 80 per cent of cases should be resolved within one month,
- 90 per cent within three months, and
- all but the most exceptional cases should be completed within 6 months.

9.2 For those cases where it is clear immediately that the allegation is unsubstantiated or malicious, they should be resolved within one week. Where the initial consideration decides that the allegation does not involve a possible criminal offence it will be for the employer to deal with it, although if there are concerns about adult safeguarding issues, the employer should discuss

them with the SAT Manager to agree whether a further enquiry is needed and who should be involved.

10. Oversight and monitoring

10.1 The SAT has overall responsibility for oversight of the procedures for dealing with allegations about people working in a position of trust with adults with care and support needs; for resolving any inter-agency issues; and for liaison with the East Riding Safeguarding Adults Board (ERSAB) on the subject. The SAT manager/senior will provide advice and guidance to the employer, in addition to liaising with the police and other agencies, and monitoring the progress of cases to ensure that they are dealt with as quickly as possible consistent with a thorough and fair process. Reviews should be conducted at fortnightly or monthly intervals, depending on the complexity of the case.

The Police decision maker attached to the SAT will be responsible for:

- liaising with the designated officer(s);
- taking part in the strategy discussion or initial evaluation;
- subsequently reviewing the progress of those cases in which there is a police investigation; and
- sharing information on completion of the investigation or any prosecution.

10.2 If the strategy discussion or initial assessment decides that a police investigation is required, the police should also set a target date for reviewing the progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to: charge the individual; continue to investigate; or close the investigation. Wherever possible, that review should take place no later than four weeks after the initial evaluation. Dates for subsequent reviews, ideally at fortnightly intervals, should be set at the meeting if the investigation continues.

11. Suspension

11.1 Suspension should be considered only in a case where there is cause to suspect an adult or other adults at the setting is/are at risk of harm or the case is so serious that it might be grounds for dismissal. However, a person should not be suspended automatically. The employer must consider carefully whether the circumstances warrant suspension from contact with adults at the setting or until the allegation is resolved, and may wish to seek advice from their Human Resources / personnel adviser.

11.2 The employer should also consider whether the result that would be achieved by immediate suspension could be obtained by alternative arrangements. In many cases an investigation can be resolved quickly and without the need for suspension. If the SAT and/or police have no objections to the member of staff continuing to work during the investigation, employers should be as inventive as possible to avoid suspension. Based on assessment of risk, the following alternatives should be considered before suspending a member of staff:

- redeployment within the setting so that the individual does not have direct contact with the adult concerned;
- providing an assistant to be present when the individual has contact with adults;
- redeploying to alternative work in the setting so the individual does not have unsupervised access to adults;

- temporarily redeploying the member of staff to another role in a different location, if possible

11.3 These alternatives allow time for an informed decision regarding the suspension and possibly reduce the initial impact of the allegation. This will, however, depend upon the nature of the allegation. The employer should consider the potential permanent professional reputational damage to employees that can result from suspension where an allegation is later found to be unsubstantiated or maliciously intended.

11.4 If immediate suspension is considered necessary, the rationale and justification for such a course of action should be agreed and recorded by both the employer and the SAT. This should also include what alternatives to suspension have been considered and why they were rejected. Where it has been deemed appropriate to suspend the person, written confirmation should be dispatched within one working day, giving as much detail as appropriate for the reasons for the suspension. It is not acceptable for an employer to leave a person who has been suspended without any support. The person should be informed at the point of their suspension, who their named contact is within the organisation and provided with their contact details.

11.5 The SAT or the police cannot require the employer to suspend a member of staff or a volunteer, although they should give appropriate weight to their advice. The power to suspend is vested in the employer only.

12. Information sharing

12.1 In a strategy discussion or the initial evaluation of the case, the agencies involved should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim.

Where the police are involved, wherever possible the employer should ask the police to obtain consent from the individuals involved to share their statements and evidence for use in the employer disciplinary process. This should be done as their investigation proceeds and will enable the police to share relevant information without delay at the conclusion of their investigation or any court case.

12.2 The SAT should adopt a similar procedure when making enquiries, including S42 enquiries to determine whether the adult named in the allegation are in need of protection or services, so that any information obtained in the course of those enquiries which is relevant to a disciplinary case can be passed to the employer without delay.

13. Specific actions

13.1 The following definitions should be used when determining the outcome of allegation investigations:

- **Substantiated:** there is sufficient evidence to prove the allegation;
- **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
- **False:** there is sufficient evidence to disprove the allegation;
- **Unsubstantiated:** there is insufficient evidence to either prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- **Unfounded:** to reflect cases where there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted

the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances.

14. Following a criminal investigation or a prosecution

14.1 The police should inform the employer and SAT immediately when a criminal investigation and any subsequent trial is complete, or if it is decided to close an investigation without charge, or not to continue to prosecute the case after the person has been charged. In those circumstances the SAT should discuss with the employer whether any further action, including disciplinary action, is appropriate and, if so, how to proceed. The information provided by the police should inform that decision. The options will depend on the circumstances of the case and the consideration will need to take into account the result of the police investigation or the trial, as well as the different standard of proof required in disciplinary and criminal proceedings.

15. On conclusion of a case

15.1 If the allegation is substantiated and the person is dismissed or the employer ceases to use the person's services, or the person resigns or otherwise ceases to provide his or her services, the SAT should discuss with the employer, and their personnel adviser, whether a referral to the DBS for consideration of inclusion on the barred lists is required. The SAT should advise the setting or service manager if s/he feels that a referral is appropriate and ensure that confirmation is obtained from the responsible officer that this has been done.

15.2 There is a legal requirement for employers to make a referral to the DBS where they think that an individual has engaged in conduct that harmed (or is likely to harm) a person; or if a person otherwise poses a risk of harm to another person.

15.3 Where it is decided on the conclusion of a case that a person who has been suspended can return to work, the employer should consider how best this can be facilitated. Most people will benefit from some help and support to return to work after a stressful experience. Depending on the individual's circumstances, a phased return and/or the provision of a mentor to provide assistance and support in the short term may be appropriate. The manager responsible should also consider how the person's contact with the adult who made the allegation can best be managed if they are still attending the setting.

16. In respect of malicious or unsubstantiated allegations

16.1 If an allegation is shown to be deliberately invented or malicious, it should be considered whether any disciplinary action is appropriate against the person who made it; or whether the police should be asked to consider if action might be appropriate against the person responsible.

17. Learning lessons

17.1 At the conclusion of a case in which an allegation *is* substantiated, the SAT should review the circumstances of the case with the employer to determine whether there are any improvements to be made to any procedures or practice to help prevent similar events in the future. This should include issues arising from the decision to suspend the member of staff, the duration of the suspension and whether or not suspension was justified. Lessons should also be

learnt from the use of suspension when the individual is subsequently reinstated. The SAT and employer should consider how future investigations of a similar nature could be carried out without suspending the individual.

SAB FINAL
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