

Nottingham City Safeguarding Adults Board

Practice Guidance: Persons in Positions of Trust

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1. Introduction

The Care Act 2014 requires Safeguarding Adults Boards to establish and agree frameworks and processes for organisations to respond to allegations against anyone who works in a position of trust with adults with care and support needs.

Where a person is experiencing or is at risk of abuse the multi-agency procedure must be followed. The purpose of the multi-agency procedure is to provide guidance for organisations to work together, and with a specific person(s) at risk of abuse, to support them to be safe.

The Care Act 2014 recognises however, that safeguarding concerns are not always in relation to the safety and wellbeing of an individual, and that they also pertain to the possible risk posed more widely by a person in a position of trust to adults with care and support needs.

In either case, this practice guidance will be relevant in supporting the work of all agencies to prevent and reduce instances of abuse and neglect.

The purpose of this guidance is to:

- Advise employers/volunteer organisations and student bodies of their responsibilities as set out in the Care Act 2014, to assess potential risks posed by a person in a position of trust to those who use their services, and, if necessary, to take action to prevent abuse or neglect
- Provide guidance by which concerns about a person in a position of trust can be appropriately shared with an employer/volunteer organisation or student body to prevent abuse or neglect.

This guidance is designed to inform and support the decision-making of Board member organisations and wider partner agencies once they become aware of a concern within the scope of this guidance.

2. Scope of this guidance

For the purposes of this guidance:

A person in a position of trust is an employee, volunteer, or student who works with adults with care and support needs. This work may be paid or unpaid.

The nature of the concerns about a person in a position of trust or the risk they may pose to adults with care and support needs may be varied and diverse.

Examples of concerns could include allegations that a 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

(Care & Support Statutory Guidance, Section 14.123)

These incidents may have occurred within the person's home/personal life, within their employment, or during a volunteering role or studies. Wherever it has occurred however, there is now a potential risk to adults with care and support needs.

The [Flowchart for Employers, Volunteer Managers and Student Bodies in Appendix A](#) illustrates how this guidance can be used both alongside the multi-agency safeguarding adults procedure and organisations own management procedures.

Additional guidance is provided in [Section 5](#) for the local authority; this may also be helpful to other organisations.

3. Responsibilities of employers/volunteer organisations and student bodies

The Care Act Statutory Guidance sets out the responsibilities of employers:

- The local authority's relevant partners, as set out in section 6 (7) of the Care Act¹, and those providing universal care and support services², must 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 (section 14.120)

1. Relevant partners include NHS bodies, chief officer of the police, relevant provider of probation services, minister of the crown exercising functions in relation to prisons, or social security, employment, or training.

2. Universal care and support services will include those services available to all, such as leisure and housing services, preventative services, as well as services provided in relation to the care and support needs of adults.

- 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 (section 14.122)
- 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 made (section 14.126)
- Employers, student bodies and voluntary organisations should have their own sources of advice (including legal advice) in place for dealing with such concerns (section 14.126)
- ...action necessary to address the welfare of adults with care and support needs should be taken without delay and in a coordinated manner, to prevent the need for further safeguarding in future (section 14.128)
- If an organisation [*permanently*] 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 reason (section 14.127.)

Each organisation must therefore ensure they have policies and procedures in place that enable them to respond to concerns about persons in positions of trust. This must include arrangements for raising safeguarding concerns to the local authority in accordance with the multi-agency safeguarding adults procedure where this is appropriate; as well as the management of concerns within their own organisation.

Employers and student bodies are responsible for working with the person in a position of trust to understand any issues, assess any risk in the context of their service, and take appropriate actions to safeguard people who use their services. This includes supporting the person in position of trust to understand the process followed and decisions reached in accordance with the organisation's policies.

Only an employer has the power to suspend an employee, redeploy them or make other changes to their working arrangements, and so must be responsible and accountable for the decisions reached. Any actions taken should consider their own internal policies and procedures, their responsibilities to provide safe services, and employment law.

Depending on the nature of the concerns raised, an employer/volunteer's organisation/student body may also have a responsibility to inform overseeing bodies according to their requirements, such as:

- Care Quality Commission (CQC)
- Charities Commission
- Commissioning bodies
- Disclosure and Barring Service (DBS)
- [Professional bodies](#)

4. Guidance for the local authority

4.1 Concerns about a person in a position of trust

If the local authority becomes aware about concerns that *do not* relate to the safety of identified adults with care and support needs but rather the *potential risk* posed by a person in position of trust, use of the multi-agency procedure will not usually be the appropriate way to respond to the concerns.

In these situations:

- This Persons in Positions of Trust guidance will need to be followed
- The local authority may need to signpost partner agencies to this guidance, for them to take precautionary actions as appropriate in relation to identified risks
- Employers, volunteer managers and student bodies will be responsible for taking actions within this guidance as set out in [section 3](#).
- If information needs to be shared with another employer, volunteer manager or student body, the organisation originally in receipt of information about the concerns will often be best placed to take actions and make decisions in relation to information sharing responsibilities ([section 5](#)). This is particularly the case where the concerns relate to an existing employee, volunteer, or student about whom there are concerns. Decisions, however, must be made on a case-by-case basis.

4.2. Working within the multi-agency safeguarding adults procedure

The multi-agency safeguarding adults procedure will be the primary source of guidance for when it should be used. However, where a concern involving a person in a position of trust relates to the safety of an identified person(s) with care and support needs, use of the multi-agency procedure will usually be appropriate.

In these situations:

- This Persons in Positions of Trust practice guidance should be followed alongside the Multi-Agency Safeguarding Adults Procedure.
- Employers, volunteer organisations and student bodies are responsible for actions as set out in [section 3](#) to prevent abuse or neglect within their setting.
- If, while working within the multi-agency procedure it is identified that the person in a position of trust may pose a risk in another setting, there will need to be consideration as to which agency is best placed to share the relevant information with other employers,

volunteer managers or student bodies to prevent abuse or neglect ([section 5](#)). This will need to be made on a case-by-case basis, considering the need to assess risk and engage with the person in a position of trust as set out in this guidance.

5. Information sharing

Where an agency has information relating to the risk posed by a person in a position of trust, they have a responsibility to consider whether this information needs to be passed on to ensure risks are appropriately considered and managed.

Each agency is independently responsible for ensuring that concerns relating to a person in position of trust are shared where necessary and appropriate, with other organisations to prevent abuse and neglect.

The need to share information with another employer/volunteer organisation or student body will be indicated when there is reasonable cause to suspect that a person in a position of trust may pose a risk to adults or children with care and support needs within another service.

This could include situations such as:

- a member of staff has been suspended pending a disciplinary or safeguarding enquiry, and they are known to be carrying out a similar role working within another organisation where they are assessed as potentially posing an immediate risk to others.
- a member of staff has been dismissed due to their behaviour towards adults with care and support needs, and is also known to be undertaking professional training, for example, as a social worker or as a health professional.
- an employee's role and responsibilities have been changed in response to a dangerous practice, but they continue to have a similar role within another organisation, where they may pose a risk to people who use that service.

Public bodies, or organisations commissioned by them, should be considered to be undertaking a **public task** as a lawful basis for sharing information. Other agencies not fulfilling public tasks should consider relying on **legitimate interests** as a lawful basis for sharing information.

In either case however, the judgement to be made is the same. When determining whether sharing the information is **justified and necessary**, a professional judgement will be required based upon balancing the safety and needs of those potentially at risk, and the rights of the employee/volunteer or student as described below:

- A fair balance must be struck between the rights of the person in a position of trust to privacy and the interests of those at risk of abuse and neglect. This necessitates a careful assessment of the severity and consequences of the intrusion in the life of a person in a position of trust and the risk posed to others.
- The risks to adults with care and support needs must be sufficient to justify interfering with the person in a position of trust's right to privacy. The consideration is therefore one of proportionality - there should be a need for the disclosure to protect adults with care and support needs.

Ask yourself: Is the sharing of this information fair?

i.e. is sharing this information something people would reasonably expect you to do in these circumstances?

- If it is reasonably believed that the sharing of information will achieve the aim of preventing abuse or neglect, there should be no more interference in the person's right to privacy than is necessary to achieve this aim.

Ask yourself: Am I only sharing information that is necessary to share?

You should always ensure you share no more information than is necessary to achieve your purpose.

It is important to record your judgement, your reasons for sharing or not sharing the information, which factors you have considered, and why you have given weight to some factors more than others. The recording template in [Appendix C](#) can be used where it is helpful to support decision making and record decisions.

5.1 Consent & involvement of the person in a position of trust

Unless unsafe or inappropriate to do so, before disclosing information to another employer, volunteer manager or student body, you must consult with the person whose information is to be shared. This gives them an opportunity to respond to the concerns and make representation on the need to share the information.

If assessed as justified and necessary for the employer to be informed of the concerns/allegations, the person in a position of trust may wish to inform their employer/volunteer organisations/student body themselves.

In this instance, their wish should be respected but it will still be necessary to contact the employer/volunteer organisation/student body subsequently to check that all the relevant information has been passed on. It should be made clear to the person in a position of trust that this is required.

Whilst working with the person in a position of trust to seek their agreement to share information wherever possible is important, consent will not always be considered a lawful basis to share (or not share) information in such situations. Consent must be freely given, specific and informed and the imbalance of power in such situations may mean that it cannot always be relied upon.

In such cases, decisions will need to be proportional to the concern as set out in [section 5](#) above. This does not preclude however in any way, the responsibility to consult with the person in the position of trust unless it is unsafe or inappropriate to do so or may place someone at risk.

6. Working with the Local Authority Designated Officer (LADO)

If the concern is that a person in a position of trust may, in the course of their work pose a risk to a child or young person under the age of 18 years of age, then the *local authority designated officer* should be notified, and actions taken within the LADO process.

Sometimes however, the risk may relate to both children/young people and adults. In such cases there will be a need for organisations and safeguarding leads to consider their responsibilities under both this guidance and the LADO process.

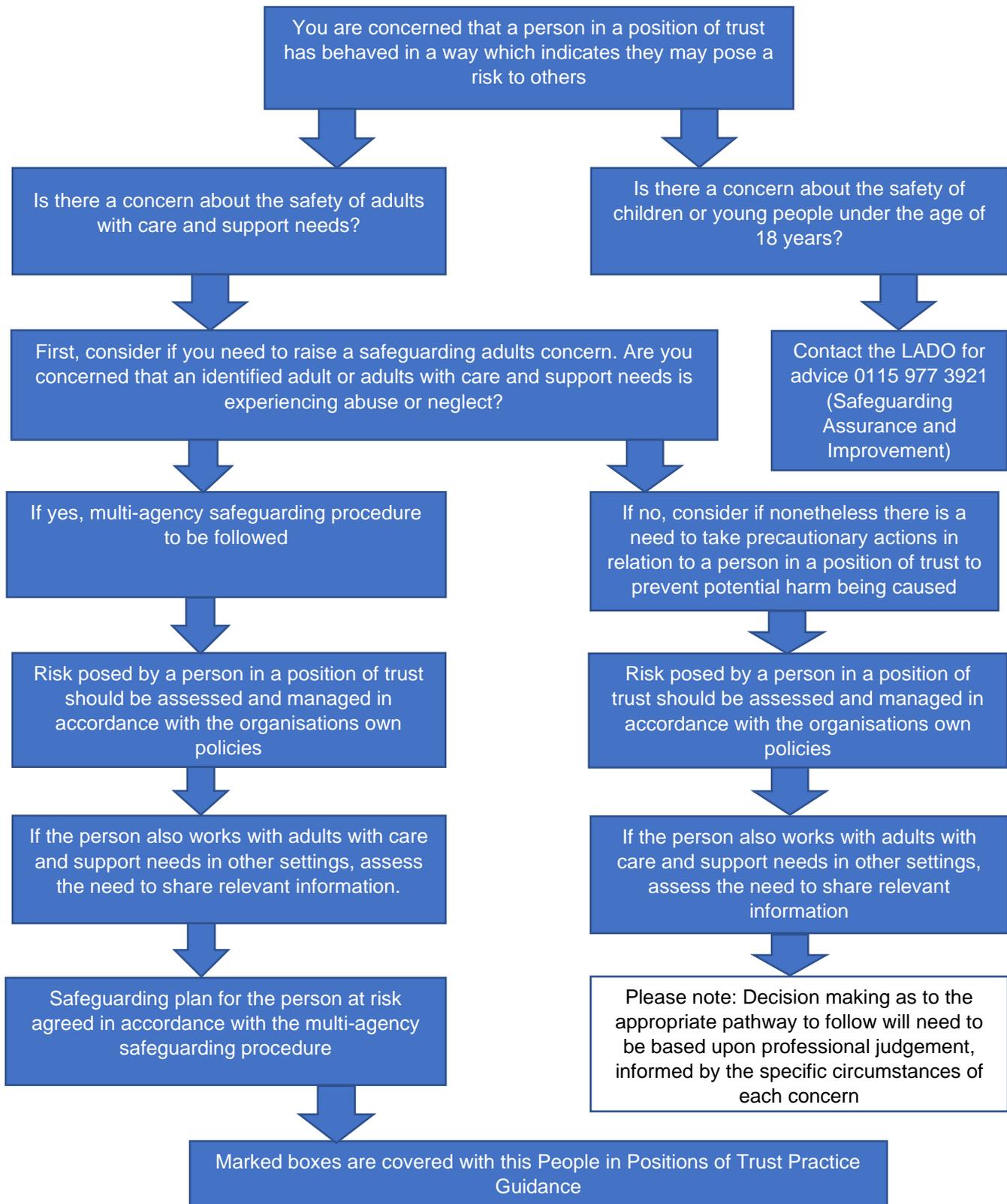
For more information about the LADO and referral information:

Please contact 0115 977 3921 (Safeguarding Assurance and Improvement Team)

7. Record keeping

Organisations must ensure they have a process for recording discussions, decisions and disclosures, in accordance with their own policies and any legal requirements.

8. Appendix A: Flowchart for Employers, Volunteer Managers and Student Bodies



9: Appendix B: Illustrative examples

Applying the guidance as part of an organisation's management process

Example 1:

John and Mary have been married for many years and both work for the same supported living service in Nottingham. Mary approaches the manager disclosing that she is experiencing domestic abuse at home and asks for the manager's help.

Mary identifies that working with her husband makes her situation worse and asks to be moved to a vacancy in the organisation's other service. The manager talks to Mary about her situation and makes sure she is fully aware of support services for both of them in Nottingham; and agrees to her request to move across to the other service from the end of the month.

Now aware of the allegations of John's violent behaviour at home, the manager considers if there are any potential risks to tenants at work. John is a long-standing member of staff and the manager is aware that there have never been any concerns about his practice. Quite the opposite, he is considered by tenants to be supportive and helpful.

Having explored Mary's concerns and allegations, the manager assesses that the alleged incidents at home relate specifically to their personal circumstances and current difficulties. As such the manager assesses that there is a low risk of any such occurrence to tenants and decides that they do not need to make changes to the John's working arrangements.

John also works part-time for another company in a very similar role. In that the manager has not assessed a risk within their work environment; she decides that it would not be justified and necessary to share this information with another employer.

Example 2:

Tina is the manager of a private leisure centre in Nottingham.

David joined the team three months ago and supports and supervises activities in the centre. There have already been several complaints from younger women who use the centre about sexually inappropriate comments, overly tactile and lewd behaviour that has made customers so uncomfortable they have complained.

Despite being challenged about these, these behaviours have persisted. Tina is concerned about the lack of boundaries and awareness of the impact of his actions. Tina addresses these issues within her organisation's disciplinary processes, and through this decides to end David's employment with them.

Tina however is aware that David in recent weeks has taken on a second job working with younger women with a learning disability, which involves taking them out on activities on a one-to-one basis. Tina raises her concerns with David as to how he might relate to them. David declines any discussion and declines to speak to his other employer about these issues.

Tina weighs up the potential risk to those women with learning disabilities, people who may not be able to speak up for themselves; and considers the potential impact on David of breaching his privacy.

The private leisure centre is not a public body nor is it commissioned by one. However, the manager considers that it is in the legitimate interests of those residents to consider sharing the information.

Upon weighing up the decision, Tina is so concerned that she decides it is justified and necessary to inform the manager of that service of their concerns so that they can assess any potential risk and take actions if needed.

Tina contacts the manager of the learning disability service, who already has feedback from colleagues about suggestive comments towards female staff. They decide to seek advice from their HR manager about how to assess and manage potential risk in their service.

Applying the guidance alongside the multi-agency safeguarding adults policy and procedure

Example

Emma is an older person with physical disabilities who lives in a care home. Her daughter raises a safeguarding concern in relation to neglect. Adult Social Care ask the Care Home to make further enquiries into the concerns raised.

During these enquiries, the care home evidences that a particular member of staff, Karen, was turning off Emma's call alarm and not attending to her needs. This placed her at significant risk due to her epilepsy. A safeguarding plan is put in place to support Emma; and the care home decide within their policies to hold a disciplinary hearing for Karen.

During this process it is identified that Karen also works weekends for another care home that support people with similar needs. As part of their employee management process, the care home talk to Karen about the need to share the information with the other care provider.

The care home can be considered to be carrying out a public task, as it is commissioned by a public body. Having spoken to Karen and weighed up the potential risks to other residents and Karen's right to privacy, the care home manager assesses that on balance that it is justified and necessary to inform the other care home manager, so that they can assess the risk and take appropriate actions.

Karen understands that this will happen but has asked to tell her employer herself. The care home manager explains that she will need to follow up with a call to confirm they have been informed.

10: Appendix C: Information Sharing Recording template

<p>Decisions to share information about a person in a position of trust</p>	
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Decisions to share information with a third-party organisation will require a professional judgement. This form can however be used to support decision making

Name of person concerned:

<p>a. Job title / outline of their role:</p>	
<p>b. Identified risks and concerns:</p>	
<p>c. What is the evidence for these concerns? Is there a reasonable cause to suspect there is a risk to others?</p>	
<p>d. What is the person in a position of trust's views about the concerns?</p>	
<p>e. Changes to working arrangements required within your work context:</p>	

<p>May the person pose a risk to children in carrying out their role for you or another organisation?</p>	
<p>If so, have you liaised with the Local Authority Designated Officer?</p> <p>What was their advice?</p>	

Is there a risk to adults with care and support needs in other settings?	
1. Where else does the person work?	
2. What is the nature of their role?	
3. What might the risks be for adults with care and support needs if the information is not shared?	
4. What might the impact of sharing the information be on the person in a position of trust?	
5. What are the views of the person in a position of trust?	
6. In your judgement, is it justified and necessary to share the information to protect adults with care and support needs? Explain your reasons and factors you have considered	
7. Did you decide to share the information? Record your reasons	
8. If the information was shared, when and how was this done?	

Name:			
Role/Title:			
Organisation:		Date:	

11: Appendix D: Advisory Note:

11.1 Managing risk duties and considerations

Each organisation will have in place policies and procedures in relation to employees, volunteers and students as appropriate and these will be the primary source of guidance. This advisory note should not be read as or used as a substitute for the organisation's own policies and procedures.

Where organisations have specific Human Resource (HR) departments, they might need to be consulted to ensure practice is in accordance with organisational policies and procedures. However, to support managers in this area the following guidance has been produced to assist good decision making.

11.1.1. Disclosure and Barring Service (DBS)

On the 1st December 2012 the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged into the Disclosure and Barring Service (DBS). This means that these same services are now provided by a single organisation rather than two.

The Disclosure and Barring Service can bar a person unsuitable to work with people at risk of abuse or neglect, 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 volunteer managers of people working in 'regulated activity' have a legal duty to make referrals to the Disclosure and Barring Service in certain circumstances. The local authority also has a power to make a referral and should do where it is necessary to ensure the appropriate referral has been made.

Regulated activity is work – both paid and unpaid – with children or adults at risk that meets certain criteria.

In relation to adults at risk, 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 to or from anywhere they would be receiving health care, personal care or social work

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:

- A. Been cautioned or convicted for a relevant offence; or
- B. Engaged in relevant conduct in relation to children and/or adults 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
- C. Satisfied the Harm Test in relation to children and/or adults at risk [e.g., there has been no relevant conduct (i.e., no action or inaction) but a risk of harm to a child or adult at risk still exists].

It is also possible to make a referral where this legal duty has not been met. For example, where there are strong concerns, but the evidence is not sufficient to justify dismissing or removing the person from working with children or adults at risk. Such a referral would need to be compliant with relevant employment and data protection laws.

Consent is not required to refer someone to DBS; a referral can be made with or without their prior knowledge, and on receipt of the barring referral, DBS will send the referred person an “early warning letter” informing them of the referral and subsequent actions. If the case reached the “minded to bar” stage, then the individual would receive the evidence that had led to the barring decision or could request it using a Subject Access Request.

The full official guidance and definitions must be referred to when deciding whether to make a Disclosure and Barring Service referral, as guidance may change over time, and malicious referrals (referral without good reason) may constitute an offence in some circumstances.

For further information contact the Disclosure and Barring Service (DBS):

- Helpline: 03000 200 190
- Website: [Disclosure and Barring Service - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- Guidance on Barring referrals: [Making barring referrals to the DBS - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- Email: customerservices@dbs.gov.uk

11.1.2 Resignations and 'Compromise/Settlement Agreements'

The fact that a person in a position of trust may tender his or her resignation, or ceases to provide their services, must not prevent an concern of abuse being reported or addressed within the safeguarding adult procedure, disciplinary procedures, or this guidance.

It is important that every effort is made to reach a conclusion wherever there are allegations concerning the welfare of an adult at risk, including any in which the person concerned refuses to co-operate with the process.

Likewise, so-called 'compromise/settlement agreements' – by which a person agrees to resign, the employer agrees not to pursue action, and both parties agree a form of words to be used in any future reference – must not be used in such cases. In any event it cannot override an employer's statutory duty to make a referral to the Disclosure and Barring Service where circumstances so require.

11.1.3 Suspension and changes to working arrangements

The possible risk of harm posed by an employee or volunteer to adults with care and support needs will need to be assessed and managed effectively, considering the nature and seriousness of any concerns, the particular circumstances and the risk of repeated incidents. When assessing the risk of harm, it is important to also recognise the emotional or psychological distress of the patient/service user.

In some cases, the employer may need to consider suspending an employee. Suspension should not be viewed as a form of sanction - it is a neutral act and does not imply guilt. Persons must not be suspended automatically or without careful consideration. Employers must consider carefully whether the circumstances of a case warrant a person being suspended until the concerns are resolved. If the person is suspended the employer should also arrange to keep the individual informed about developments in the workplace.

Suspension may not be required where there are appropriate alternatives. This may sometimes include changes to working arrangements, such as not working with a particular patient/service

user or working in a non-patient/service user contact role while the concerns are being investigated. The potential for alternative working arrangements will be determined by the nature of the organisation's structure and services.

Only an employer has the power to suspend an employee, redeploy them or make other changes to their working arrangements, and so must be responsible and accountable for the decision reached.

11.1.4 Disciplinary hearing processes and responsibilities

The need for and timing of a disciplinary hearing is a decision for the relevant employer and will depend on the specific circumstances of the situation.

Disciplinary hearings will focus on the conduct of the individual as an employee. Decisions reached should, however, also give due consideration to the organisation's responsibility to safeguard adults at risk.

For these reasons, the disciplinary hearing process should:

- reassure itself that it is acting proportionately to the risk of abuse occurring or reoccurring
- understand the potential impact of disciplinary decisions on the adult at risk and other service users
- assure itself that the person in a position of trust is safe to work with adults with care and support needs (and where needed detail the measures required to provide this reassurance)
- consider the need to seek advice from their organisation's safeguarding adult lead in relation to the impact of their decisions on an adult at risk
- understand and act upon responsibilities to refer individuals to professional regulatory bodies and make referrals to the Disclosure and Barring Scheme, where appropriate.

11.1.5 Professional Bodies

If the member of staff is registered with a professional body and there are concerns about their fitness to practice, the employer/volunteer/student body manager must refer to the professional body's published guidance and consider the need to raise the concern with that professional body.

A professional body has a range of options where appropriate, these usually include suspending the person from practice, de-registering them or imposing conditions of practice that the person must work under.

The principal organisations within health and social care are:

- Nursing and Midwifery Council [www.nmc-uk.org]
- Social Work England [www.socialworkengland.org.uk]
- Health & Care Professions' Council [www.hcpc-uk.org]
- General Medical Council [www.gmc-uk.org]
- General Optical Society [www.optical.org]
- General Dental Council [www.gdc-uk.org]
- General Chiropractic Council [www.gcc-uk.org]
- Royal Pharmaceutical Society of Great Britain [www.rpsgb.org.uk]
- General Osteopathic Council [www.osteopathy.org.uk]
- Allied Health Professionals [<https://www.england.nhs.uk/ahp>]

Each of these:

- maintains a public register of qualified workers
- sets standards for conduct, performance and ethics
- considers allegations of misconduct, lack of competence or unfitness to practice
- makes decisions as to whether a registered worker can practice