

Adult Position of Trust Framework

Toolkit to support local implementation

Version Control Sheet

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• Introduction

1. The document is a toolkit to support local implementation of the West Midland Position of Trust Framework (2017) and as a result should be read in conjunction with this Framework.
2. It is a requirement of the Care Act 2014 Statutory Guidance that Safeguarding Adults Boards (SAB) should establish and agree a framework and process for any organisation to respond to allegations against anyone who works, (in either a paid or an unpaid capacity,) with adults with care and support needs¹.
3. The Care Act 2014 Statutory Guidance is clear that the local authority, Police and Clinical Commissioning Group and those providing universal care and support services, should have clear policies in line with those from the SAB 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 document is not intended to replace any single agency guidance but to act as a useful supplementary document.
4. The Coventry Safeguarding Adults Board (CSAB) requires its partner agencies to be individually responsible for ensuring they adopt and implement the West Midlands Adult Position of Trust framework (the “Framework”) and maintain clear organisational procedures for dealing with adult Position of Trust concerns.
5. 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. Employers (or student body or voluntary organisation) are required 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 adults².
6. CSAB also requires partner agencies and the service providers they commission to identify a designated person to oversee the delivery of responsibilities in their organisation (i.e. adult Position of Trust lead).
7. 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 Position of Trust 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**. Legal advice may be sought due to the **legal complexities** involved and to ensure an organisation is acting in accordance with the law.
8. Each partner agency, may be required to provide assurance to the CSAB that the Person in a Position of Trust arrangements within their organisation are functioning effectively. The CSAB

¹ Paragraph 14.121 Care and Support Statutory Guidance

² Paragraph 14.122 Care and Support Statutory Guidance

should maintain oversight of whether these arrangements are considered to be working effectively between and across partner agencies in the City.

9. 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.
10. 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), Multi-agency public protection arrangements (MAPPA).

- **Best Practice guidance when making a decision to disclose information**

1. The default position should be that the owner of the information (data owner) about a person in a PoT should not share it without the person's knowledge and permission, unless doing so would increase risk to the adult/s involved or others. The person in a PoT should be encouraged to share the information with their own employer/s first. If they decline to share it with their employer/s for whatever reason, this does not mean the information cannot be shared. In deciding whether to nevertheless share the information with an employer, student body or voluntary organisation, the following principles should be followed.
2. If the person in a PoT asks the data owner not to share the information, a decision must be made in line with the principles contained within this guidance. If it is agreed that information will not be shared, this must be qualified since it may be the case that more detail comes to light to change this decision. If a decision is made at a later date to share information, the person in a PoT should be consulted again and given a further opportunity to disclose the information him or herself if it is appropriate to do so. Again, the data owner could decide to share the information even if the person in a PoT decides not to. All decisions to share or not share information, and their rationale should be clearly recorded
3. In each case involving an allegation or concern against a person in a PoT, a balance has to be struck between the duty to protect people with care and support needs from harm or abuse and the effect upon individuals of information about them being shared, for example, upon the person's Human Rights (Article 8- the right to private and family life).
4. For these reasons each case must be considered on its own merits and personal data shall be processed in accordance with the principles contained in The Data Protection Act 2018 this is the UK's implementation of the General Data Protection Regulation (GDPR).
5. Due regard must be had to Article 8 of the European Convention on Human Rights, which states that:

'Everyone has the right to respect for his private and family life, his home and his correspondence'.

And

‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’.

6. When deciding whether to interfere with a person’s Article 8 rights, each case must be judged on its own facts. The issue is essentially one of proportionality. Information is to be disclosed only if there is a “pressing need” for that disclosure. In considering proportionality, consideration should be given to the following general principles³:

- The legitimate aim in question must be sufficiently important to justify the interference,
- The measures taken to achieve the legitimate aim must be rationally connected to it,
- The means used to impair the right must be no more than is necessary to accomplish the objective,
- A fair balance must be struck between the rights of the individual and the interests of the community; this requires a careful assessment of the severity and consequences of the interference⁴.

“There is a general presumption [which is not absolute] that information should not be disclosed, such a presumption being based upon a recognition of (a) the potentially serious effect on the ability of [in this case convicted people] to live a normal life; (b) the risk of violence to such people and (c) the risk that disclosure might drive them underground.⁹”

7. Before actually disclosing information to a third party, there is a need to consult with the person whose information is to be disclosed and to give them an opportunity of making representations before the information is disclosed⁵.

“[T]he imposition of such a duty is a necessary ingredient of the process if it is to be fair and proportionate.⁶”

8. Information may be shared by an individual or an agency in the expectation that it will not be shared with others; i.e. it will be kept confidential. Confidential information can be shared if it is justified as being in the public interest (e.g. for the detection and prevention of crime and for the protection of vulnerable persons, i.e. children or adults with care and support need). It is a matter for professional judgment, acting in accordance with information sharing protocols and the principles of the DPA to decide whether breaching the person in a Position of Trust’s confidentiality is in the public’s interest.

9. If after following the above principles, and weighing up the information available, a decision is made not to tell the person in a Position of Trust about the concern about them and ask their permission to share it with their employer, (because doing this would place any adults or children at increased risk of harm), then this decision and the reasons for it should be recorded. However, further planning processes must identify the earliest opportunity for them to be informed.

³ R (on the application of H) v A City Council [2011] EWCA Civ 403

⁴ Huang v Secretary of State for the Home Department, Kashmiri v Same [2007] UKHL 11, [2007] 2 AC 167, para [19]

⁵ R (L) v Commissioner of Police of the Metropolis (SoS for the Home Department intervening) [2010] 1 AC 410

⁶ Ibid per Lord Neuberger (Par [84])

10. Disclosures to employers should be made without unnecessary delay. If the disclosure is made verbally to the employer, it is best practice to follow this up in writing to outline exactly what information has been shared. A copy of this can be shared with the person in a PoT if this is appropriate, and will not increase risk.
11. Agencies may wish to consider their agency's information sharing arrangements.

- **Guidance on Recording Position of Trust Cases**

1. Record-keeping is an integral part of all adult safeguarding processes to ensure that adults with care and support needs are safeguarded, and that organisations and individuals are accountable for their actions when responding to concerns about a person in a Position of Trust.
2. Individuals with responsibility for the investigation and management of PoT concerns must, as far as is practicable, contemporaneously document a complete account of the events, actions and any decisions taken, together with their rationale. This is to enable any objective person to understand the basis of any decision that was made, together with any subsequent action taken.
3. Records of actions taken to investigate PoT concerns which have been found to be without substance should also be retained so as to build up any history.
4. Records may be used to prepare reports to the Safeguarding Adult Board (for example to identify trends and patterns or give assurance that adults with care and support needs have been protected).
5. They might also be shared with any other relevant party to ensure the safety of adults with care and support needs.
6. A chronology or log of key events, decisions and actions taken should also be maintained to provide a ready overview of progress.
7. Individuals (including a person in a Position of Trust who is the subject of the recording) are entitled to have access to their personal records whether they are stored electronically or manually. It is therefore important that information recorded, is fair, accurate and balanced.

- **The purpose of the PoT record-keeping is to:**

1. Prevent unnecessary re-investigation if an allegation resurfaces after a period of time.
2. Enable patterns of behaviour which may pose a risk to adults with care and support needs to be identified.
3. To assure the Safeguarding Adults Board that adults with care and support needs are protected from harm

• Position of Trust Risk Balance Sheet

1. The owner of concern information i.e. the first person or nominated representative of the owner's organisation who identifies a position of trust risk can use this checklist to determine if position of trust procedures need to be commenced. If in doubt consult the appropriate Adult Safeguarding Lead.
2. This checklist can also be used by Adult Safeguarding Leads on receipt of a position of trust referral to aid decision making.

QUESTION	Unlikely to support position of Trust procedures	Likely to support position of Trust procedures
Has the individual: <ul style="list-style-type: none"> behaved in a way that has harmed or may have harmed an adult; possibly committed a criminal offence against, or related to, an adult; behaved towards an adult in a way that indicates they may pose a risk of harm to adults with care and support needs. 	No	Yes
Has the individual: <ul style="list-style-type: none"> behaved in a way that has harmed, 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 is unsuitable to work with adults at risk 	No Child protection issues but does not work in a regulated activity with adults with care and support,	Child protection issues suggesting suitability to work with adults with care and support must be considered
Who is the information coming from – are they credible? Is there any incident/tension/friction between the parties?	After information gathering source of information is questionable (e.g. malicious). Or is an anonymous concern with insufficient information to warrant procedures.	Source of information is credible and reliable. E.g. police, several consistent witnesses.
What is the severity of the allegation?	Insignificant	Severe
What level of access to adults at risk does the individual have?	Supervised	Unsupervised
How frequently does the individual have access to adults at risk?	Never/Infrequent	Very frequent
Likelihood of reoccurrence.	None/Low	High
Does the incident relate to them as a victim or person alleged to be the source of risk?	Victim	Person alleged to be the source of risk
What is the truth of the allegation? The greater the conviction that the allegation is true the more pressing the need to disclose.	Weak or no evidence Concern	Strong evidence Fact

Why does the third party need to know (proportionality)? The more intense the need (legally or operationally) the more pressing the need to disclose.	No legal remit to share No operational need to know	There is a legal right to be told Operational need to safeguarding adults at risk
What are the risks if the information is NOT shared? When answering this question consider the persons previous history (if any) of involvement with children.	No or few risks	Risks are significant.
How will the disclosure of information impact on the persons ARTICLE 8 – ECHR – Right to Private Life?	Whilst everyone has the right to a private life these situations will require a case by case consideration of the facts and a balancing exercise of the individuals rights against the wider public interest.	
Is there a qualified right to confidentiality or does the law enable or require the information to be shared.	No right to confidentiality and no public interest to share	Of public interest

• Factors to consider in relation to PoT notifications

The following applies to all cases where current or historical concern, suspicion or allegation arises in connection with:

- a. The person in a PoT's own work/voluntary activity (Adults and Children)
- b. The person in a PoT 's life outside work i.e. concerning adults at risk in the family, social circle.
- c. The person in a PoT's life outside work i.e. concerning risks to children, the individual's own children or other children.

Questions		No cause for concern	Some cause for concern requiring investigation	Cause for concern
1.	The person has behaved in a way that has harmed or may have harmed an Adult with care & support needs or a child?	No harm or potential harm	Some harm or potential harm	Serious harm or potential harm
2.	Possibly committed criminal offence against or related to an adult/s with care and support needs or a child?	No	Not to an Adult with care & support needs but the offence is serious	Yes

3.	Otherwise 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.	No	Yes	
4.	May be subject to abuse themselves which means their ability to provide a service to adults at risk must be reviewed	No	Yes	

• Agency good practice checklist

1. Does your organisation have an Adult PoT lead?
2. Does your organisation have an Adult PoT record system to record concerns, the steps taken, the decisions made on actions or no action taken, and the basis for taking this position?
3. Does your organisation include reference to how Adult PoT issues have been dealt with in your assurance report to SAB?
4. Does your organisation consider what support is offered to a person in an Adult PoT alleged to have caused harm?
5. Has your organisation established sources of advice (including, where necessary, legal advice

• Local reporting requirements

1. The Performance, Quality and Assurance subgroup (PQ&A) of the CSAB undertakes a number of investigations and reports to provide assurance of best practice and any learning points to the business group and the Board. This can include monitoring and sharing single agency audits, and ensuring that partners have effective quality assurance processes in place.
2. CSAB via its PQ&A subgroup will seek assurance that there are effective processes for any organisation to respond to allegations against anyone who works in a PoT and that there is evidence of good practice in relation to organisational responses to Adult Position of Trust issues.

• Resolution process

1. Where there is concern that this framework is not succeeding in ensuring strong governance and effective partnership working to safeguard adults with care and support needs, resolution should be sought through local escalation processes, and/or discussions between the organisations and the CSAB Chair as appropriate.

• Review

1. This toolkit will be reviewed two years following ratification or sooner if the necessity arises.

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