

**Managing Concerns around People in Positions of Trust with Adults who have Care and Support Needs**

**Policy and Procedures**

**April 2025**

**Policy, Performance and Customer Care Team**

**Adult Social Care | Adults Directorate**

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# Policy Summary

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| *If you require this policy or any associated documents in another format (e.g. other languages, easy-read or any other format), please email details of your requirements to:* [*ascservicedevelopment@halton.gov.uk*](mailto:ascservicedevelopment@halton.gov.uk)*.* | |

# Acknowledgements

This policy was originally developed and based upon the West Midlands Adult Position of Trust Framework: A Framework and Process for responding to allegations and concerns against people working with adults with care and support needs (2017).

# Glossary

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| --- | --- |
| **ADASS** | **Association of Directors of Adult Social Services** |
| **DBS** | **Disclosure & Barring Service** |
| **Data Controller** | **A person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed** |
| **Data Subject** | **An individual who is the subject of personal data** |
| **Data Processor** | **In relation to personal data any person (other than an employee of the data controller), who processes the data on behalf of the data controller** |
| **PiPoT** | **Person in position of trust** |
| **SAB** | **Safeguarding Adults Board** |

# 1. Introduction

The Care Act requires that partner agencies and their commissioners of services should have clear recordings and information sharing guidance, set explicit timescales for action and are aware of the need to preserve evidence. This policy builds upon existing relevant statutory provision. The guidance for ‘Managing allegations against People in a Position of Trust’ is contained within Section 14 of the Care and Support Statutory Guidance of the Care Act 2014. Other relevant legislation includes: Data Protection Act 2018/European General Data Protection Regulation 2018 (GDPR); Human Rights Act 1998 and employment legislation.

As with all adult safeguarding work the six principles underpinning the Care Act 2014 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

This policy gives guidance about the following considerations: information sharing; employer responsibilities; risk assessments; employee rights etc. The Data Protection Act 2018, European General Data Protection Regulation 2018 and Human Rights Act 1998 must be taken into account within this process.

This policy relates to those instances where a relevant agency is alerted to information that may affect the suitability of a professional, or volunteer to work with an adult(s) at risk, where such information has originated from activity outside their professional or volunteer role and place of work. The alleged victim, in such circumstances, does not have to be an adult at risk, for example, it could be their partner or a child. This document refers to when there is an allegation which does not directly involve an adult at risk, but may have risk implications in relation to the employment or volunteer work of a person in a position of trust (PiPoT).

**What is excluded from this policy?**

If an allegation is made that does concern the actions of a professional, or volunteer which relates to alleged abuse or neglect of a person with care and support needs and this amounts to a safeguarding enquiry, then such an allegation should be dealt with by following the local adult safeguarding policy and procedures. Such procedures should include directions about how such allegations are referred and investigated.

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

Safeguarding is not a substitute for:

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

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

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

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

# 2. Responsibilities

**Safeguarding Adults Board**

Safeguarding Adults Boards need to establish and agree a framework and process, for how concerns and allegations against people working with adults with care and support needs (i.e. those in positions of trust) should be notified and responded to. Whilst the focus on safeguarding adults work is to safeguard one or more identified adults with care and support needs, there are occasions when incidents are reported that do not involve an adult at risk, but indicate, nevertheless, that a risk may be posed to adults at risk by a **person in a position of trust.**

Each agency, in their annual assurance statement to the SAB, will be required to provide assurance that arrangements to deal with allegations against a person in a position of trust, within their organisation are adequate and are functioning effectively. The SAB will, in turn, maintain oversight of whether these arrangements are considered to be working effectively between, and across partner agencies in the local authority area. Appropriate cross organisational challenge should be possible as it is an important part of this process.

**Local Authority**

The Local Authority relevant partners, are set out in section 6 (7) of the Care Act 2014.

Pursuant to the Care Act 2014, there is a requirement that Safeguarding Adults Board for local authorities, should establish and agree a framework and process for any organisation to respond to allegations against anyone, who works in either a paid or unpaid capacity with adults with care and support needs.

**Partners**

Employers, student bodies and voluntary organisations should have clear and accessible policy and procedures in place setting out the PiPoT process. These should determine who should undertake an investigation and include timescales for investigation and include how support and advice will be made available to individuals against whom allegations have been made. Individuals should also be made aware of their rights under employment legislation and any internal disciplinary procedures.

Any allegations against people who work with adults, should be reported immediately to a senior manager within the organisation. Employers, student bodies and voluntary organisations should have their own source of advice (including legal advice) in place for dealing with such concerns.

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.

Examples of such concerns could include allegations that relate to a person who works with adults with care and support needs who has:

* Behaved in a way that has harmed, or may have harmed an adult or child
* Possibly committed a criminal offence against, or related to, an adult or child
* Behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs

**Children**

When a person’s conduct towards an adult may impact on their suitability to work with, or continue to work with children, this must be referred to the Local Authority Designated Officer (LADO). Where concerns have been identified about their practice and they are a parent/carer for children, then consideration by the Data Controller should be given to whether a referral to Children’s Services is required.

**Concerns raised by Local Authority Children’s Teams**

Where a concern has arisen following an assessment by the local authority children’s teams, they must decide through their assessment whether the employing organisation is required to be informed in order to manage any risks.

**Data Controller**

If an organisation is in receipt of information, that gives concern about a person in a position of trust, then that organisation should give careful consideration as to whether they should share the information with the person’s employers (or student body or voluntary organisation), to enable them to conduct an effective risk assessment. The receiving organisation becomes the **Data Controller** as defined by the [Data Protection Act 2018](https://www.gov.uk/data-protection) and [GDPR Article 4](https://gdpr-info.eu/) (please refer to Section 4.0 Legal Framework).

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

If, following an investigation, a Person in a Position of Trust is removed, by either dismissal or permanent redeployment, to a non-regulated activity, because they pose a risk of harm to adults with care and support needs (or would have, had the person not left first), then the employer (or student body or voluntary organisation), has a legal duty to refer the person to the Disclosure and Barring Service (DBS). It is an offence to fail to make a referral without good reason. If unsure, contact the DBS for further advice. In addition, where appropriate, employers should report workers to the statutory and other bodies responsible for professional regulation such as the Health and Care Professions Council, General Medical Council and the Nursing and Midwifery Council.

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

# 3. Information Sharing

Both the GDPR and the Data Protection Act 2018 identify statutory obligations and gateways when sharing a data subject's information. In particular, Data Protection Act 2018 Schedule 8 provides for the conditions to share information based on safeguarding and vital interests.

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

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

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

**Timescales**

This policy applies whether the allegation or incident is current or historical.

**Retention Schedules**

Information relating to referrals that do not progress will be subject to a retention period of 3 years from the date of decision. Information to those referrals that progress to disclosure will be subject to a retention period of 10 years from date of decision.

# 4. Legal Framework

Both the Data Protection Act 2018 and the GDPR define the following:

**Data Subject** means an individual who is the subject of personal data

In other words, the data subject is the individual whom particular personal data is about. Whilst the legislation is no longer applicable once a data subject is deceased, a common law duty of confidentiality may result in certain restrictions being considered on a case by case basis.

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

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

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

* Individuals
* Organisations; and
* Other corporate and unincorporated bodies of persons

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

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

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

The Data Protection Act 2018 and GDPR (please refer to Appendix 1) requires anyone handling personal information to comply with the principles set out in the Acts:

* The information processed must be fair and lawful
* Personal data must be kept in a secure and confidential place

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

The [Crime and Disorder Act 1998](https://www.legislation.gov.uk/ukpga/1998/37/contents) states that any person may disclose information to a relevant authority under Section 115 of the Act:

***“Where disclosure is necessary or expedient for the purposes of the Act (reduction and prevention of crime and disorder)”***

The [Human Rights Act 1998](https://www.legislation.gov.uk/ukpga/1998/42/contents) – the principles set out in the Human Rights Act must also be taken into account within this framework in particular the following:

**Article 6 –** The right to a fair trial; this applies to both criminal and civil cases against them…… the person is presumed innocent until proven guilty according to the law, and has certain guaranteed rights to defend themselves

**Article 7 –** A person who claims that a public authority has acted or proposes to act in a way which is unlawful by section 6(1) may:

1. Bring proceedings against the local authority under this act in the appropriate court or tribunal; or
2. Rely on the convention rights or rights concerned in any legal proceedings

**Article 8 –** The right to respect for private and family life

# 5. PIPOT Process

All discussions and decisions made in relation to a PIPOT referral must be clearly recorded within the PIPOT referral form (see appendix 4) with a clear and detailed rationale which considers the wider risk of not disclosing or a clear decision why a disclosure is not appropriate.

For decisions in relation to complex referrals or where consent to disclose information is not obtained, the Head of Service for Independent Living will make the final decision on whether to make a disclosure. It may also be decided that a formal meeting is required to discuss the complexities of the case further, before coming to a final decision on whether a disclosure is made.

Advice from Legal Services can be sought for any PIPOT referral, however, legal advice **must** be sought in cases where consent to disclose is not obtained.

# 

# References

Information Commissioner’s Office – Data Controllers and Data Processors: What Difference is and What the Governance Implications are. Data Protection Act

Information Commissioner’s Officer – Guide to the Data Protection Act

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

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/principles/>

# Appendices

| Appendix no. | Name | Document |
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| 1 | **Data Protection Act 2018 and GDPR Overview** |  |
| 2 | **Managing Concerns and Allegations against People who work with Adults with Care and Support Needs Flowchart** |  |
| 3 | **PIPOT Referral Form – Public Disclosures** |  |
| 4 | **PIPOT Referral Form** |  |