

Cheshire Care Services - Safeguarding Policy and Procedure

Purpose

- To ensure that abuse of Service Users rights is avoided.
- To comply with the Disclosure and Barring Service(DBS) requirements.
- To comply with the guidelines contained in the publication “No Secrets.”
- To comply with the Protection of Children (Scotland) Act 2003 (PoCSA).
- To comply with Regulation 18 of the Care Quality Commission (Registration) Regulations 2009
- Ensure awareness of wider safeguarding powers

Scope

. All workers.

Important note: Where reference is made to the DBS reporting processes and requirements, be aware that the following policy and procedure is generic, and intended to set out general principles and courses of action where no local guidelines apply. If your Local Authority area publishes a local set of guidelines on Adult Abuse Reporting, those local guidelines must take precedence over this policy. You should obtain a copy of the local guidelines and attach a copy to this policy in the manual.

The contact details for your local Adult Protection team is as follows:

Sandwell Council ASSIST Tel: **0845 352 2266** Fax: 0121 569 5789 Email: **secure_assist@sandwell.gcsx.gov.uk** Address: Sandwell Council ASSIST, PO Box 15825, Oldbury, B69 9EL.

Between 8PM and 8AM and on weekends and bank holidays contact the Emergency Duty Team on 0121 561 3704.

You should contact this number if you need to report any actual or suspected case of abuse.

Policy for preventing persons barred from working in the care sector from being offered employment as a care worker:

- Definition of a care worker, from the CQC publication "Scope of Registration"
- The definition of personal care is broader than that used in previous registration systems. It covers:
 - . (a) Physical assistance given to a person in connection with:
 - (i) Eating or drinking (including the administration of parenteral nutrition);
 - (ii) Toileting (including in relation to menstruation);
 - (iii) Washing or bathing;
 - (iv) Dressing;
 - (v) Oral care;

(vi) The care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist).

. (b) The prompting and supervision of a person to do any of the types of personal care listed above, where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision. “Prompting and supervision” means that services whereby staff prompt and directly supervise a person when they are carrying out the above actions (i)-(vi). Supervision will normally include direct observation of the action as it is carried out or otherwise checking on how it carried out, but will not normally include merely encouraging someone to perform the activity, or checking at some point afterwards on whether it has been done.

- The Recruitment Policy guides employers through the steps required to meet regulatory and best practice requirement of safe and responsible employee recruitment. While this policy is mainly concerned with the definitions of abuse, and the actions which should be taken when abuse is suspected or discovered, the policy is also concerned with the wider issue of ensuring that only appropriately recruited and checked employees come into contact with vulnerable adults. The required actions are embedded in the recruitment system and must be followed for the recruitment of any care worker, in order to prevent a person included on the DBS register of individuals barred from gaining employment in a proscribed position.
- The CQC will be notified immediately of any persons who apply for a post as a care worker who are discovered to be on the DBS Barred List.

- All the provisions which apply to employees also apply to volunteers.

Policy for the prevention of abuse during employment:

o Definitions (from “No Secrets”)

o Abuse is a violation of an individual’s human and civil rights by any other person or persons.

o The main range of different forms of abuse are:

- Physical abuse;
- Sexual abuse;
- Psychological abuse;
- Financial or material abuse;
- Neglect and acts of omission;
- Discriminatory abuse.

o The organisation will ensure that Service Users are safeguarded from physical, financial, material, psychological, racial, medication or sexual abuse, neglect, discriminatory abuse, self-harm, and inhuman or degrading treatment.

o Allegations of misconduct from any source will be taken seriously by the organisation and must be immediately reported to a senior manager for investigation. It will be fully and openly investigated by the organisation. The objectives of the investigation will be to:

- Establish facts;
- Assess the needs of the vulnerable adult for protection, support and redress;
- Make decisions regarding what follow-up actions should be taken with respect to the perpetrator and the service or its management if they have been culpable, ineffective or negligent.

o Allegations of misconduct against an individual will normally result in the immediate suspension of that person from duty, pending an investigation of the allegations.

o On the suspension of an individual, the Registered Manager will carry out a thorough internal investigation. On completion of the investigation a decision will be made by the Registered Provider as to whether it is appropriate to report the matter to the appropriate authority. An appropriate authority may be the Multi-Disciplinary Protection of Vulnerable Adults Team, who should be contacted via Social Services.

o Allegations of misconduct resulting in actual or potential harm to a Service User will be notified to the CQC within 48 hours.

Procedure

Procedure for preventing persons barred from working in the care sector from being offered employment:

- **Background:**
 - The DBS Barred List is designed to identify those people who are considered as 'unsuitable' to work with vulnerable adults and are therefore prevented from obtaining employment in such positions. A responsibility is placed upon employers to identify such people and notify the DBS. They will also be required to check the DBS Barred list before offering employment to any new staff who are likely to have regular contact with vulnerable adults.

- **Checking the list:**
 - There is a statutory requirement on providers who are registered for a regulated activity including Care Home Services with or without nursing, domiciliary care services, Shared Lives (formally known as Adult Placement but not day services) to check the DBS Barred List before employing a new member of staff who is likely to have regular contact with a vulnerable adult, or in cases whereby an existing member of staff moves into such a position. The only way of making this check will be as part of a Disclosure Service application.

 - Employees may not be offered a post before a satisfactory DBS Barred List check has been received.

 - The DBS Adult First check may only be used in circumstances whereby recruitment is required in order to meet statutory levels of staffing.

- **Referral to the list:**
 - There is a statutory requirement for providers of care to refer workers to the DBS for inclusion on the DBS Barred List if they consider that the person is guilty of misconduct such that a vulnerable adult was harmed or placed at risk of harm. This requirement covers both existing employees and those who leave their employment, and whose conduct comes to light at a later date.

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- A referrer will need to provide full details of the individual concerned, the nature of the allegation, any investigation which has taken place and any action taken as a result. Referral forms are available on the DBS web site.
- An individual who is included on the DBS Barred list as a confirmed (but not provisional) listing would be guilty of a criminal offence if they applied for a position as a care worker. If a provider discovered that a person they offered employment to was on the list, they must cease to employ that person.
- It will be the duty of the employer to consider when a member of staff is suspended pending an allegation, whether they should be referred to the list (this is not a requirement at this stage). There will be a need to weigh up evidence. In some cases there may be a narrow tightrope between duty of care to member of staff and duty of care to a vulnerable person. Best practices assert that a vulnerable person always has to be safeguarded first. If you do refer and subsequently find no evidence, the person's name will immediately be removed. The details of the referral will be passed on to the person concerned, so you should not pass on any information to the DBS which cannot be shared with the person concerned.
- Employers should note that the above advice is challenged by the Chartered Institute of Personnel and Development – the professional body for HR and Personnel practitioners. The CIPD points out that referral of a person to the DBS Barred register may breach the legally defined Human Rights of the employee, when the allegation that led to the referral is later found to be incorrect or insufficient to support the employee's inclusion on the register. It will almost certainly constitute a breach of the employment contract, and is also likely to be held as libellous. This would apply even if the disciplinary procedures had been carried out to the letter. Caution and referral to a legal professional before taking any action is strongly advised.
- We would advise clients that information regarding all positions involving regular contact with vulnerable adults should include advice to prospective candidates that they will be checked against the DBS Barred list. That a declaration as to any previous incidents in relation to misconduct resulting in harm to a vulnerable adult should be included in the application form for all relevant jobs.

- Those services which regularly use agency staff will need to be particularly vigilant to check that the workers they are using have up to date checks. Although most agencies will in practice undertake this, the responsibility for ensuring that they are not ‘employing’ a worker without a check rests with the Registered Provider, who may delegate the day to day check to the Registered Manager.

Procedures vary between local authorities, notwithstanding the existence of a national standard. If your local authority has its own procedure, this must be appended to this policy.

Only if there are no local guidelines, use the following:

REFERRAL PROCEDURE

The first priority should always be to ensure the safety and protection of vulnerable adults and if medical attention is required this must be sought immediately.

- **Report**
 - It is the responsibility of everyone to act on suspicion or evidence of abuse or neglect (see Public Interest Disclosure Act 1998 and in-house procedures) and refer to the local Social Services Adult Protection Team.
- **Lead Responsibility**
 - The local Social Services Adult Protection Team will take the lead and be responsible for managing the process by establishing the facts of the case, identify those that need to be involved and coordinate the response.
- **Consult with the Police**
 - When complaints about alleged abuse suggest that a criminal offence may have been committed it is imperative that reference should be made to the police as a matter of urgency. The CQC must also be notified. Early referral or consultation with the police will enable them to establish whether a criminal act has been committed and this will give them the opportunity of determining if, and at what stage they need to become involved. Early involvement of the police will help ensure that forensic evidence is not lost or contaminated and this may prevent the abused adult being interviewed unnecessarily on subsequent occasions. Notification of the Police may be done either by the referring individual/agency or by the local Social Services Area Team. This will be dependent upon the information received at the initial point of concern and following any subsequent preliminary enquiry, and at what point the lead agency was alerted. To prevent any possibility of failure to alert the police at the proper time the person/agency making the referral should identify whether or not the police have been informed. When Social Services receive the initial referral they will identify and record whether or not the police have

Reviewed: 17.03.2014 T.Archer
Review on: 17.03.2015



been informed. Constabularies have Family Protection officers whose role it is to investigate allegations of the abuse of Vulnerable Adults where the person responsible is a family member or in a position of care. Where the person responsible is not a family member or Support Worker or Carer or where the reported incident is one of financial abuse, then the matter will be investigated by local officers. Criminal investigation by the police takes priority over all other lines of enquiry; however, police investigations may proceed alongside those dealing with health and social care issues.

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- **Notes:**
 - In some areas the Police have determined that Providers must carry out an initial investigation before referral, in order to avoid the Police becoming involved in large numbers of investigations of reports which prove to be groundless. Check your local policy.
 - In some areas, the Police demand that their investigation takes precedence over internal disciplinary procedures of the employer. However, the employer is entitled, indeed obliged, to take such action as may be necessary to safeguard the wellbeing of Service Users, wherever they may be being cared for. This may include dismissal and referral to appropriate agencies for banning from working with vulnerable people. It is unlikely that this responsibility is discharged simply by referral of the case to the Police.

- **Inform Inspection Unit**
 - By regulatory law service providers must notify the CQC without delay incidents of abuse and allegations of abuse, as well as any incident which is reported to or investigated by the police.

 - Service providers must notify the CQC about abuse or alleged abuse involving a person(s) using the service, whether the person(s) are the victim(s), the abuser(s), or both. Please refer to the Essential standards of quality and safety for information about what must be notified in relation to abuse.

 - Service providers must also alert the relevant local safeguarding authority when notification is made to the CQC about abuse or alleged abuse,

 - The forms are available on the CQC website.

 - The execution of the statutory responsibilities of the CQC relies on timely and considered intervention by their officers. It is therefore essential that enquiries into allegations involving residential, nursing or domiciliary care services are undertaken in collaboration with the appropriate inspectorate. The CQC must satisfy themselves that the local Social Services District Team is aware of incidents or allegations of abuse which come to the attention of the CQC from other sources.

- **Establish Working Arrangements**
 - The enquiry must take account of other agencies and identify those who need to be involved. Where there is a joint interest or responsibility an early agreement regarding lead responsibility and on working arrangements must be clarified. Where agreement cannot be reached or where difficulties are being experienced, the Social Services District Team Manager should be asked to obtain clarification at a senior level with the agencies involved.

- **Involve the Alleged Victim**
 - The process of the enquiries should be carefully explained to the allegedly abused person and their consent to proceed with the enquiry obtained if possible. Arrangements should be made to have a relative, friend or independent advocate present if the person so desires. The relative, friend or independent advocate should not be a person suspected of being in any way involved or implicated in the abuse.
 - A review of a Service Users Support Plan should be undertaken to ensure that they are properly supported following the alleged abuse incident and they should be supported by the service to take part in the safeguarding process to the extent to which they want or are able to do, or to which the process allows, and they are kept informed of progress.

- **Contact Advocacy Services**
 - See Advocacy Policy and Procedure, and the Complaints section of the Service User's Handbook for advocacy contacts.

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- **Bring in Specialist Skills**
 - Consideration must be given to enlisting the services or advice or personnel with specific skills or knowledge, particularly where people involved have limited communication skills, or where English is not their first language.

- **Coordinate**
 - The Social Services Team, as the lead agency, coordinating the response, must notify other agencies and identify those who need to be involved and ensure the following processes are addressed:
 - Investigation of the incident using the guidance;
 - Action to ensure immediate safety of the alleged victim;
 - Early involvement of key agencies through a strategy meeting or discussion (by telephone if appropriate);
 - Agreement with other agencies who should take the lead in the investigation;
 - Assessment and Care Planning for the vulnerable person who has been abused;
 - Action with regard to criminal proceedings;
 - Action by employers, such as, suspension, disciplinary proceedings, use of complaints and grievance procedures and action to remove the perpetrator from the professional register;
 - Arrangements for treatment or care of the abuser, if appropriate;
 - Consideration of implications relating to regulation, inspection and contract monitoring;
 - Appropriate measures to reassure and support carers and in keeping them informed;
 - Development, implementation and monitoring of a Support Plan;
 - Maintain appropriate records.

- **Investigation**

- For a variety of reasons, agencies other than the Police may need to conduct investigations into incidents of alleged abuse. This is because absence of (or insufficient evidence to substantiate) criminal activity cannot be taken as confirmation that abuse has not taken place. Investigation is a process that focuses on gathering “good evidence” that can be used as a basis for the decision whether or not abuse has occurred. It must be a rigorous process and the evidence must be capable of withstanding close scrutiny, as it may later be required for formal proceedings. Such proceedings may be against the perpetrator of the abuse or against other individuals or organisations in positions of responsibility and accountability. In these circumstances any decision made on the facts that arise from the investigation is made on the civil standards of proof i.e. on the balance of probabilities.

- **Case Conference**

- Following the investigation or if deemed necessary at any time during the process; it may be necessary to call a case conference involving all relevant agencies and parties. One of the purposes of the case conference would be to make multi agency decisions about future action to address the needs of the individual. An agency involved in the case may ask for a case conference to be held, although the final decision to call a conference rests with the Social Services Team Manager.

- **Confidentiality**

- Reporting incidences of alleged abuse may involve disclosing confidential personal information. Organisations and their workers will need to make reference to their organisation’s information sharing policies to ensure they are aware in what circumstances information sharing with other agencies may be appropriate.
- The Data Protection Act makes important requirements about how information about individuals is stored ‘processed’ and shared, appropriate measure must be taken by the service to protect personal data. Notifications about individuals must not include their name or other details that a third party could use to identify them. Advice is to use codes instead of names, even where codes are used, they should not easily identify an individual such as room number or date of birth. A record of agreed codes should be established and kept secure, should the CQC require more information regarding an incident.

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- **Feedback**
 - The accepted good practice concerning recording, minuting and circulation will be observed and The Social Services Team Manager must ensure that feedback is given to the referring organisation and family as appropriate.

- **General procedures for the prevention of abuse during employment:**
 - The Whistle Blowing Policy will be drawn to the attention of all employees during induction.
 - Managers will ensure that they have a clear understanding of the contents of “No Secrets”, the relevant documents published by the Dept. of Health.
 - The person responsible for training new employees will verify that they have a clear understanding of the possible forms of abuse based on “No Secrets”, their responsibility to prevent and report such abuse, and the avenues open to them for reporting.
 - Allegations of abuse will be dealt with according to the procedures set out in “No Secrets”.
 - All Service Users will receive a copy of the Service Users Handbook.
 - Refer to the organisation’s Complaints Policy and Procedure, Whistle-blowing Policy and Procedure and “No Secrets” for detailed procedures if allegations of abuse are made.
 - Formal supervisions will take place at least every three months, and the results recorded (see Employee Supervision Policy and Procedure). The supervision format will ensure that employees are asked, at every instance of supervision, whether they have received a criminal conviction or warning, or notice of referral to the DBS register, which has not yet been declared to the employer.
 - Complete the DBS Referral Form, which can be downloaded from the DBS Website.

REFERRAL TO THE INDEPENDENT SAFEGUARDING AUTHORITY

Ensure Safety

Procedure for reporting suspected cases of abuse.

Implications for recruitment procedures:

OTHER SAFEGUARDING POWERS:

- The Mental Capacity Act 2005 provides a framework for adults who lack capacity.
- Safeguarding Vulnerable Groups Act 2006. The Sexual Offences Act 2003 outlines a number of offences where a person's choices about sexual activity may be affected by their mental disorder.
- The Law Commission has undertaken a consultation exercise on adult social care law including safeguarding powers.
- They are likely to recommend clarification of the existing legal position and establish a duty to make enquiries and take appropriate action in adult protection cases. Practitioners should be aware of possible changes to the law later in 2011.

Reviewed: 17.03.2014 T.Archer
Review on: 17.03.2015



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Reviewed: 17.03.2014 T.Archer
Review on: 17.03.2015



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