

Managing Allegations Against Staff Policy (April 2016)

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POLICY AMENDMENTS

Amendments to the Policy will be issued from time to time. A new amendment history will be issued with each change.

| New Version Number | Issued by | Nature of Amendment | Approved by and Date | Date on Intranet |
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1 INTRODUCTION

- 1.1 S&R CCG aspires to the highest standards of corporate behaviour and clinical competence, to ensure that safe, fair and equitable procedures are applied to all organisational transactions, including relationships with patients, their carers, public, staff, stakeholders and the use of public resources.
- 1.2 S&R CCG required to fulfil its legal duties under the Children Act 1989, Section 11 of the Children Act 2004, Working Together to Safeguard Children (2015) and statutory guidance on Promoting the Health and Well-being of Looked After Children (2015).
- 1.3 The Care Act (2014) and accompanying guidance provides the Legal Framework for safeguarding and promoting the welfare of adults. This guidance has replaced previous guidance in the document 'No Secrets' (2000).
- 1.4 This policy is supported by a number of CCG policies and procedures which demonstrate the organisation's commitment to improving safeguarding.
- 1.5 This policy outlines how, as a commissioning organisation, S&R CCG will effectively fulfil its legal duties and statutory responsibilities with regard to managing allegations against staff.
- 1.6 This policy applies to all CCG staff, and anyone working on behalf of, or undertaking work or volunteering for the CCG.
- 1.7 It provides a framework to ensure appropriate actions are taken to manage allegations, regardless of whether they are made in connection to duties with the CCG or if they fall outside of this, such as in their private life or any other capacity.
- 1.8 This policy should be read in conjunction with the CCG:
 - Safeguarding Children Policy
 - Safeguarding Adults Policy

This CCG Policy should be used in conjunction with the relevant Local Safeguarding Children Board's (LSCB) safeguarding children procedures, and the Local Safeguarding Adult's Board (LSAB) safeguarding adult's procedures (see Appendix 1).

2 ENGAGEMENT

- 2.1 This policy was developed by the Designated Professionals for Safeguarding Children and Adults on behalf of the four North Yorkshire and York Clinical Commissioning Groups.

3 IMPACT ANALYSES

3.1 Equality

In line with the CCG's Equality and Diversity Policies, this policy aims to safeguard all children, young people and adults who may be at risk of abuse, irrespective of disability, race, religion/belief, colour, language, birth, nationality, ethnic or national origin, gender or sexual orientation. Approaches to safeguarding children must be child centred, upholding the welfare of the child as paramount. (Children Acts, 1989 and 2004). Approaches for safeguarding adults must consider the wishes of that adult and uphold the legal framework outlined in the Care Act 2014

- 3.1.1 All CCG staff must respect the child or adult alleged to be have been harmed and their family/carers' culture, religious beliefs, gender and sexuality. However this must not prevent action to safeguard children, young people and adults who are at risk of, or experiencing, abuse. Support in clarifying or understanding diversity issues can be sought from the Equality and Diversity Lead within the CCG.
- 3.1.2 All reasonable endeavours must be used to establish the child, young person, families/carers' or adults' preferred method of communication, and to communicate in a way they can understand. This will include ensuring access to an interpretation service where people use languages (including signing) other than English. Every effort must be made to respect the person's preferences regarding gender and background of the interpreter.

3.2 Sustainability

- 3.2.1 A sustainability impact assessment has been completed. The impact of this policy is neutral.

3.3 Bribery Act 2010

- 3.3.1 Due consideration has been given to the Bribery Act 2010 in the development of this policy and no specific risks were identified.

4 SCOPE

- 4.1 This policy applies to all staff employed by the CCG, this includes; all employees (including those on fixed-term contracts), temporary staff, bank staff, locums, agency staff, contractors, volunteers (including celebrities), students and any other learners undertaking any type of work experience or work related activity.
- 4.2 All CCG personnel have an individual responsibility for the protection and welfare of children and adults at risk, and must know what to do if concerned that a child or adult at risk is being abused or neglected or if they are concerned about the behaviour of a member of CCG staff or volunteer which may indicate that they pose a risk to children, young people or adults at risk.

5 POLICY PURPOSE and AIMS

5.1 The purpose of this Policy is to provide a framework for managing cases where allegations are made about CCG staff which indicate that children, young people or adults at risk are believed to have suffered, or are likely to suffer, significant harm. Concern may also be raised if the staff member is behaving in a way which demonstrates unsuitability for working with children, young people or adults at risk, in their present position, or in any capacity. The allegation or issue may arise either in the employee's/professional's work or private life. Examples include:

- Committing of a criminal offence against, or related to, children, young people or adults at risk;
- Behaving towards children, young people or adults at risk in a manner that indicates they are unsuitable to work with children, young people or adults at risk of harm or abuse;
- Where an allegation or concern arises about a member of staff, arising from their private life such as perpetration of domestic violence against a close family member, or where inadequate steps have been taken to protect vulnerable individuals from the impact of violence or abuse;
- Where an allegation of abuse is made against someone closely associated with a member of staff such as a partner, member of the family or other household member.

5.2 The procedures also apply where there are concerns relating to inappropriate relationships between those who work with children or young people and adults as outlined in the *Sexual Offences Act 2003*, namely:

- Having a sexual relationship with a child under 18 if the adult is in a position of trust in respect of that child, even if the relationship is said to be consensual (*Sections 16-19, Sexual Offences Act 2003*);
- 'Grooming', i.e. meeting a child under 16 with intent to commit a relevant offence (*Section 15 Sexual Offences Act 2003*);
- Other 'grooming' behaviour giving rise to concerns of a broader child protection nature (e.g. inappropriate text/e-mail messages or images, gifts, socialising, use of social media etc.);
- Possession of indecent images of children or use of the internet to access indecent images of children.
- For care workers for people with a mental disorder: sexual activity with a person with mental disorder and related offences (*Sections 38-44, Sexual Offences Act 2003*)”

5.3 If an allegation relating to a child is made about a person who works with vulnerable adults or vice versa, consideration will be given by the Senior Named Officer (SNO) and the CCG Safeguarding Lead Officer regarding alerting the employee's line manager. This consideration should be given regardless of whether the allegation relates to occurrences inside or outside of the work place or working hours.

6. DEFINITIONS

6.1 This policy is focused on management of risk, based on assessment of harm and abuse.

6.2 Definitions of harm to children are detailed in the Children Acts 1989 and 2004 and in accompanying statutory guidance (DfE,2015). Four clear categories of harm/abuse are described:

- Neglect
- Sexual Abuse (including Child Sexual Exploitation)
- Physical Abuse
- Emotional Abuse

Further details of each category can be found in the CCG Safeguarding Children Policy (accessed via CCG intranet sites) and multi-agency safeguarding children procedures (accessed via the Local Safeguarding Children Boards).

6.3 The Care Act (2014) identifies ten categories of abuse for adults:

- Physical abuse
- Domestic violence
- Sexual abuse
- Psychological abuse
- Financial or material abuse
- Modern slavery
- Discriminatory
- Organisational
- Neglect and acts of omission
- Self-neglect

Further details of each category can be found in the CCG Safeguarding Adults Policy and multi-agency safeguarding adults' procedures (accessed via the Local Safeguarding Adults Boards).

7. RESPONDING TO CONCERNS/ALLEGATIONS AGAINST MEMBERS OF CCG STAFF OR VOLUNTEERS

7.1 Sources of concerns/allegations

There are a number of sources from which a complaint, concern or direct allegation may arise, including:

- A child, young person or adult with care and support needs
- Parent or other adult
- Member of the public
- Professional colleague internally or from a partner organisation
- You may notice it yourself
- Via a disciplinary investigation

- Via a safeguarding children/adult investigation (including referrals made under PREVENT)
- Via a police investigation
- Via a complaint received by the CCG (or NHS England)

7.2 Initial action by person receiving allegation/identifying concern

7.2.1 The person to whom the allegation is first reported or who first identifies a concern should treat the matter seriously and keep an open mind.

7.2.2 The safety of the child, young person or an adult at risk is of paramount importance. Urgent action may be required to secure the immediate safety of any children, young people or adults at risk, in which case a report to the police should be made via the 999 system.

7.2.3 The person receiving the allegation/identifying a concern should:

- Record the information (where possible using the child's/adult's own words), including the time, date and place of incident, persons present and any actions taken.
- Immediately report the matter to the CCG Senior Named Officer for Allegations Against Staff (SNO); or the Senior Manager on call if out of normal working hours.
- If the SNO is unavailable or if the SNO themselves or their deputy is the subject of the allegation report to the Chief Officer.
- Consider if the child/adult has suffered, or is at risk of suffering, significant harm and if this is the case make an immediate referral under the appropriate Safeguarding Children or Safeguarding Adults Multi Agency procedures.
- If the allegation may be a criminal offence the matter should be reported to the police. In such cases the police have primacy for any investigations and evidence must be preserved. Interviews or de-briefs with staff members should not be instigated, and any potential crime scene or evidence should remain undisturbed until advised by the police.
- Seek advice from the Designated Professionals if unsure regarding which action to take.
- The person who is the subject of the allegation should not be informed until advice has been sought from the SNO. This is important in terms of future investigations (see 7.4 below).

7.3 Initial Action by the SNO

7.3.1 When informed of a concern or allegation the SNO should not investigate the matter or interview the member of staff or any potential witnesses. They should:

- Ensure (if appropriate) that safeguarding children/adults referral/alert is made (or has been made) in accordance with multi agency procedures – this should be within one working day.
- Report the allegation to the relevant Local Authority Designated Officer (LADO), again, within **one working day** using the LADO referral form. (See Appendix) Completed LADO referral forms should be emailed using secure email (i.e. nhs.net to gcsx.net).

- If the SNO is unsure whether a case meets the criteria for a LADO referral, this case should then be discussed with the Designated Safeguarding Children/Adults Professionals and/or the LADO.

7.3.2 The report to the LADO should include;

- Written details of the concern/allegation;
- Any information relating to times, dates, location of the incident, and names of any potential witnesses;
- All discussions, any decisions made and rationale for these and any actions taken so far

7.3.3 If the allegation/concern is received outside normal working hours and requires immediate action, the SNO should consult with the Out of Hours Emergency Duty Team or Police, and inform the LADO on the next working day.

7.3.4 Consideration should be given to informing CQC and NHS England.

7.3.5 The SNO should inform the CCG Chief Officer and a Serious Incident report of the allegation against a healthcare or non-healthcare professional should be reported on the Strategic Executive Information System (STEIS).

7.3.6 Where the allegation/concerns relates to CCG directly-employed staff, the SNO, **in consultation with the LADO and Designated Safeguarding Children/Adults Professionals** should contact the HR department for advice regarding the action to be taken in relation to the employee. In conjunction with HR and the staff member's line manager and the Police where there is a criminal investigation, the SNO will decide whether suspension is appropriate during the period of investigation. HR will advise on the authority levels and process requirements for this action. HR will also advise whether the CCG disciplinary procedure is to be followed and whether referral is needed to the Disclosure and Barring Service.

7.3.7 In conjunction with HR, if the staff member is a registered professional consideration must be given to notifying any relevant regulatory body.

7.3.8 Any action taken by the CCG to manage an allegation must not jeopardise any external investigations, such as a criminal investigation.

7.4 Informing the referred person

7.4.1 Following advice from the LADO/Designated Professionals and, where relevant, the Police, the Line Manager/SNO should inform the referred person as soon as possible about the nature of the allegation, how enquiries will be conducted and the possible outcome. The referred person should:

- Be treated fairly and helped to understand the allegations;
- Be reminded of their right to have support from a colleague or representative;
- Be kept informed of the progress and outcome of the investigation and implications for any disciplinary action;
- If suspended, be kept up to date about events in the workplace.

7.5 Next steps in management of allegations

7.5.1 There are three strands in consideration of an allegation:

- Enquiries and assessment by Children's Social Care or Adult's Safeguarding Officers about whether a child/young person/ adult at risk of harm or abuse, is in need of protection or in need of services.
- A police investigation of a possible criminal offence.
- Consideration of an investigation under disciplinary procedures (including possible suspension from duties).

7.5.2 Once a LADO referral has been received, the LADO will consult, as appropriate, with Children's Social Care or Adult's Safeguarding Officers and/or the Police. Consideration needs to be given to the following:

- If Children's Social Care or a police response may be appropriate and if a Strategy Meeting and/or an Evaluation Meeting needs to be held.
- If the allegation should be managed solely by the employer (with the proviso that, if further information comes to light suggesting a child protection response or criminal response may be necessary, then a further consultation will take place).

7.6 Outcomes of a LADO referral

7.6.1 Outcomes of a LADO referral may include no further action; disciplinary and/or internal investigation; Safeguarding Children/Adults Strategy Meeting and Evaluation Meeting.

7.6.2 In **all** cases, the LADO, Designated Safeguarding Professionals, the SNO and the CCGs' HR representative should discuss whether an investigation under disciplinary procedures is necessary. The discussion should consider any potential misconduct or gross misconduct on the part of the member of staff and take into account:

- Information provided by the Police, Health Professionals or Children's or Adult's Social Care Services;
- The result of any investigation;
- The different standard of proof in disciplinary and criminal proceedings.

7.6.3 The decision to instigate disciplinary proceedings lies with the employer, who will comply with NHS policy and the CCGs internal HR policies and procedures.

7.6.4 If formal disciplinary action is not required, the employer should institute any agreed actions arising from the LADO discussions/meetings.

7.6.5 **No further action** - where the LADO agrees that no further action is to be taken regarding the individual facing the allegation, the decision and justification should be recorded by both the SNO and the LADO. The SNO with the LADO should:

- Agree what information should be put in writing to the individual concerned by the SNO;

- Identify any action in respect of those who made the initial allegation where there is evidence that an allegation was made maliciously and;
- Consider what information should be shared with the child and their parents / carers, or the adult and/or carers, and by whom

Where the allegation does not require a formal process, appropriate action should be initiated **within three working days**.

- 7.6.6 **Disciplinary/internal investigations** - where an investigation by the police or Children's Social Care is unnecessary, or has been completed, the SNO will need to determine if any further disciplinary / internal investigation is needed.
- 7.6.7 **Safeguarding Children Strategy Meetings** - if there is cause to suspect that a child is suffering or is likely to suffer significant harm; the LADO will immediately ask Children's Social Care for a strategy meeting to be convened in accordance with agreed multi-agency safeguarding children procedures.
- 7.6.9 **Safeguarding Children Evaluation Meetings** – following a safeguarding children strategy meeting or in cases where a formal strategy discussion is not considered appropriate because the threshold of 'significant harm' is not reached, but a police investigation might be needed, the LADO should nevertheless conduct a similar discussion with the police, the employer, and any other relevant agencies to evaluate the allegation and decide how it should be dealt with.
- 7.6.10 The formal evaluation meeting will determine whether the allegation is substantiated, false, malicious, unfounded or unsubstantiated, and agree actions accordingly.
- **Substantiated** - there is sufficient identifiable evidence to prove the allegation;
 - **False** - there is sufficient evidence to disprove the allegation;
 - **Malicious** - there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;
 - **Unfounded** - there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the allegation or was mistaken about what they saw. Alternatively they may not have been aware of the circumstances;
 - **Unsubstantiated** - this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.
- 7.6.11 **Safeguarding Adults Cases** - Where the case involves a safeguarding adults concern, the LADO does not have statutory responsibility. Hence, agreed multi-agency safeguarding adults procedures should be followed.
- 7.6.12 **Safeguarding Adults Case Conference** - In a case involving the Adult Safeguarding procedure an enquiry will follow the strategy meeting or discussion if the concern meets the criteria. The outcomes of any enquiries will be discussed

at strategy review meetings and the case will be concluded at the case conference stage. In serious cases or where there has been a death, a Safeguarding Adults Review may take place.

7.6.13 Under the Care Act (2014) for Adult Safeguarding, the focus is on the outcomes for the person alleged to have been harmed. Substantiating the abuse is not the primary focus in all but the most serious, criminal or complex cases, in which cases substantiation may be essential for lessons to be learned or for disciplinary or legal remedies to be implemented.

7.6.14 A adult who has been harmed or put at risk of harm may choose not to be involved with a safeguarding investigation. However, where the concern is raised about the actions of an employee an enquiry will proceed without the adult at risk's consent as the CCG has a duty of care to safeguard children and other adults who may be at risk.

7.6.15 For all allegations a clear and comprehensive summary of the allegation, details of how the allegation was followed up and resolved, a note of any action taken and the decisions reached should be kept on the confidential personnel file of the individual concerned and a copy of this should be provided to the individual.

8. Actions on conclusion of a case

8.1 If the allegation is substantiated and the person is dismissed, the employer ceases to use the person's services, or the person resigns, the LADO should discuss with the employer/SNO whether a referral should be made to the Disclosure and Barring Service and/or to a regulatory body. If a referral is made, it should be submitted within 1 month of the allegation being substantiated.

8.2 As well as supporting the member of staff throughout the investigation, consideration must be paid to supporting the member of staff through integration back into the workplace should this be appropriate post investigation. On-going support for the member of staff may be offered through Occupational Health. Support may also be needed for colleagues/other staff members involved.

8.3 The employer/SNO and the LADO together with the CCG Safeguarding Leads should review the circumstances of each case to determine whether there are any improvements to be made to the CCG's procedures or practise. Any recommendations from the review will be implemented and information disseminated to the appropriate people within the CCG and local safeguarding forums.

9. Confidentiality

9.1 Every effort should be made to maintain confidentiality and guard against publicity whilst an allegation is being investigated or considered. Information should be restricted to those who have a need to know in order to protect children/ adults, facilitate enquiries and manage disciplinary processes.

10. Record Keeping

10.1 The SNO has the responsibility for ensuring the following records are kept:

- The nature of the allegation/concern;
 - Who was spoken to as part of the process and what statements/notes were taken and when;
 - Any records that were seen and reviewed;
 - What actions were considered and justification for specific decisions, including suspension and any actions taken under the CCG Disciplinary Procedure;
 - Minutes and actions of all meetings that take place;
 - Details of how the allegation was followed up and decisions reached.
- 10.2 The above information should be retained on file in accordance with the CCG record keeping policy and/or any national directives (e.g. guidance from the Goddard Inquiry into historical child sexual abuse).
- 10.3 Records should also be retained for staff who subsequently leave the CCG. The purpose of the record is to enable accurate information to be given in response to any future request for a reference and will provide clarification in cases where a future DBS disclosure reveals information from the police that an allegation was made, "no further action" was taken or did not result in a prosecution or conviction. It will also prevent unnecessary re-investigation if, as sometimes happens, allegations resurface after a period of time.
- 10.4 All records should be saved in a secure area and not on personal drives and the folder should be restricted to relevant personnel on the shared drive.
- 10.5 Emails can form part of records or can be seen as individual records, so if they are also a critical part of the investigation, they should also be securely stored in the relevant file.

11 IMPLEMENTATION

- 11.1 Staff will be advised of the policy through staff briefings. The Allegations Against Staff Policy will be available via the CCG website and intranet.
- 11.2 Breaches of this policy may be investigated and may result in the matter being treated as a disciplinary offence under the CCG's disciplinary procedure.

12 TRAINING and AWARENESS

- 12.1 All CCG staff must be trained and competent to be alert to potential indicators of abuse and neglect in children and adults, know how to act on their concerns and fulfil their responsibilities in line with LSCB/LSAB procedures.
- 12.2 All CCG staff will complete the level of training commensurate with their role and responsibilities.
- 12.3 The CCG will keep a training database detailing the uptake of all staff training so that Line Managers can be alerted to unmet training needs.

12.4 Staff will be made aware of this policy through briefing within the staff newsletter.

13 MONITORING and AUDIT

13.1 Audit of awareness of safeguarding children/adult processes will be undertaken via agreed personnel appraisal processes.

13.2 Breaches to this policy will be exception reported to CCG quality structures.

14 POLICY REVIEW

14.1 This policy will be reviewed two years from the date of issue. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation/guidance, as instructed by the senior manager responsible for this policy.

15 REFERENCES/SUPPORTING DOCUMENTS

Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/contents>

Children Act 2004 <http://www.legislation.gov.uk/ukpga/2004/31/contents>

The Sexual Offences Act (2003) <http://www.legislation.gov.uk/ukpga/2003/42/contents>

The Care Act (2014) <http://www.legislation.gov.uk/ukpga/2014/23/contents>

The Care Act (2014) Statutory Guidance for Implementation
<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

Department for Education (2015) *Working Together to Safeguard Children*
www.workingtogetheronline.co.uk/index.html

NHS Commissioning Board (2013) *Safeguarding Vulnerable People in a reformed NHS: Accountability and Assurance Framework*. (Published in electronic format only)
<http://www.england.nhs.uk/wp-content/uploads/2013/03/safeguarding-vulnerable-people.pdf>

DH (2015) *Promoting the Health and Wellbeing of Looked After Children*
<https://www.gov.uk/government/publications/promoting-the-health>

NYSCB (2015) *Managing Allegations Against Staff Practice Guidance*
<http://www.safeguardingchildren.co.uk/admin/uploads/practice-guidance/managing-allegations-against-staff-practice-guidance.pdf>

NYASB PROCEDURES
<http://www.nypartnerships.org.uk/CHttpHandler.ashx?id=1228&p=0>

16 ASSOCIATED DOCUMENTS

- Recruitment and Selection Policy
- Disciplinary Policy
- Whistle Blowing Policy
- Training and Development Policy
- Allegations Against Staff Policy
- Safeguarding Children Policy
- Safeguarding Adults Policy

17 APPENDICES

Appendix (1) – Contact Information

| Safeguarding Children Boards | |
|--|--|
| North Yorkshire | www.safeguardingchildren.co.uk |
| City of York | www.saferchildrenyork.org.uk |
| East Riding | www.erscb.org.uk |
| Safeguarding Adults Boards | |
| North Yorkshire | www.nypartnerships.org.uk |
| City of York | www.safeguardingadultsyork.org.uk |
| East Riding | www.ersab.eastriding.gov.uk |
| Safeguarding Children Referrals | |
| North Yorkshire | Phone: 01609 780780 Out of hours: 01609 780780 Email: social.care@northyorks.gov.uk |
| City of York | Phone: 01904 551900 Out of hours: 01609 780780 |

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| | Email: childrensfrontdoor@york.gov.uk |
| East Riding | Phone: 01482 395500 Out of hours: 01377) 241273 Email: childrens.socialcare@eastriding.gcsx.gov.uk |
| Safeguarding Adults Referrals | |
| North Yorkshire | Phone: 01609 534527 Out of hours: 0845 0349417 Email: social.care@northyorks.gov.uk |
| City of York | Phone: 01904 555111 Out of hours: 0845 0349417 Email: adult.socialsupport@york.gov.uk |
| East Riding | Phone: : 01482 396940 Out of hours: 01377 241273 Email: safeguardingadultsteam@eastriding.gcsx.gov.uk |
| LADO Referrals | |
| North Yorkshire and City of York | Phone: 01609 532477 (office hours) Email: social.custodian@northyorks.gcsx.gov.uk Referral form:  LADOREfForm.doc |
| East Riding | Phone: 01482 396559 |

Appendix (ii) - Equality and Sustainability Impact Assessment



EIA Analysis.doc