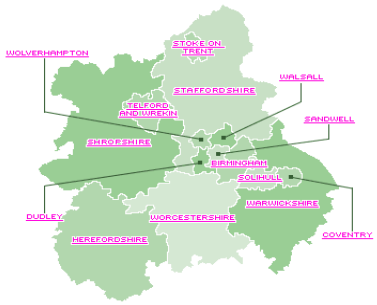

West Midlands Adult Position of Trust framework :

A framework and process for responding to allegations and concerns against people working with adults with care and support needs.

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Summary – about this document

The Care Act 2014 introduced a single new statute to replace most existing adult social care law. The care and support statutory guidance[1] formalised the expectations on local Safeguarding Adults Boards to establish and agree a framework and process for how allegations against people working with adults with care and support needs (i.e. those in a position of trust) should be notified and responded to.

While the primary focus of Adult Safeguarding work is to safeguard one or more identified adults with care and support and support needs, there will be occasions where a risk or potential risk may be posed by a person who works with adults with care and support needs, but where there is no specific adult at risk identified. 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[2].

This document provides a high-level, overarching framework for the West Midlands region on the approach and process to follow when responding to allegations and concerns relating to people who work in a Position of Trust (PoT) with adults who have care and support needs.

This document is directed at agencies and individuals who are “relevant partners” as defined in Section 6 of the Care Act 2014, and/or who are members of their local Safeguarding Adults Board, and those agencies providing universal care and support services[3].

This document should be read alongside the West Midlands Adult Safeguarding Policy and Procedures[4], and relevant local information sharing protocols.

It is for local Safeguarding Adults Boards to decide whether to adopt this framework formally, and how to implement this framework to meet their local need and service arrangements. It is recognised that local operational arrangements and service structures that manage this area of work differ across the region.

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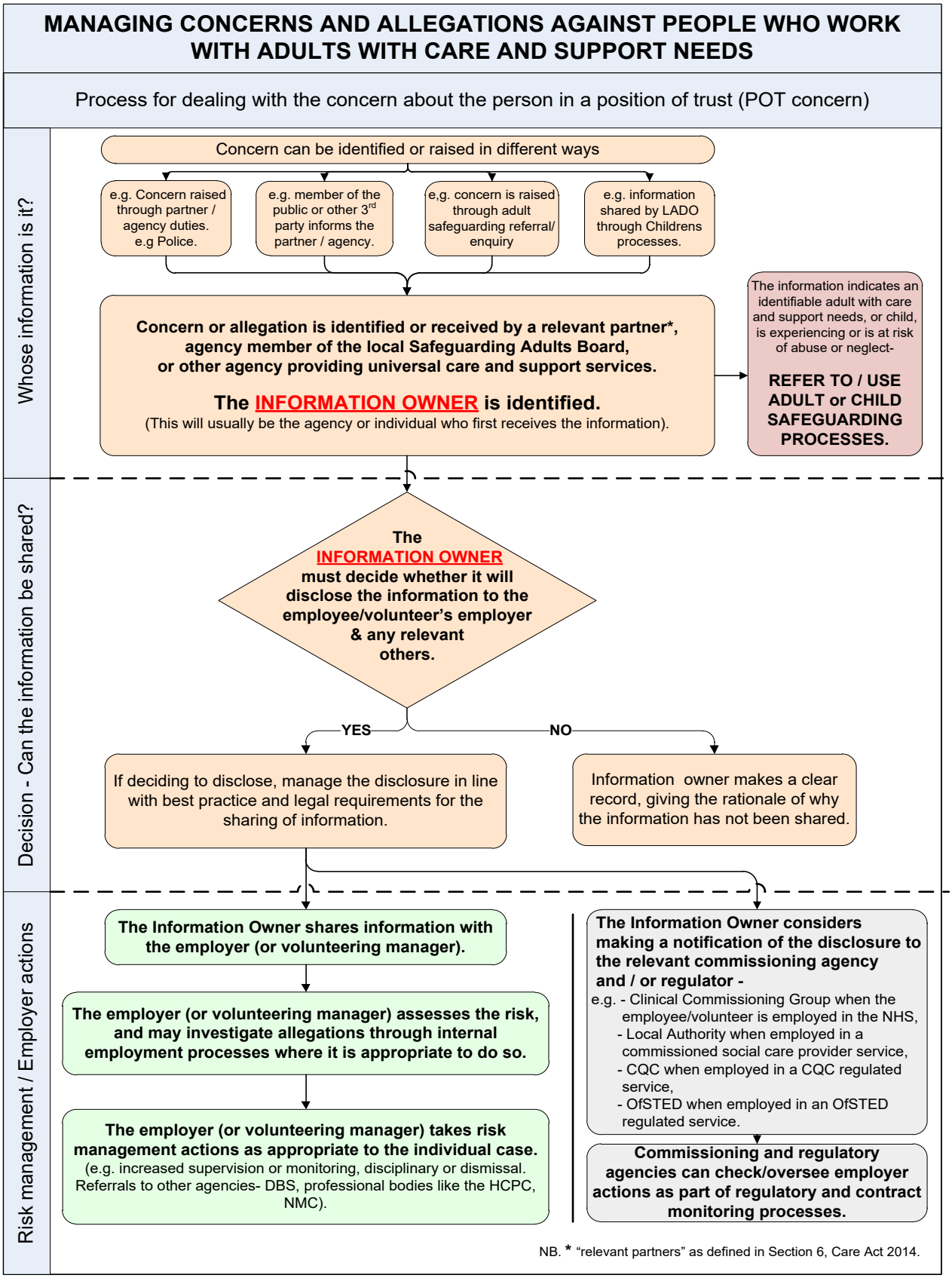
[1] Care and Support statutory guidance: Chapter 14.

[2] Care and Support statutory guidance: Section 14.122.

[3] Care and Support statutory guidance: Section 14.120.

[4] Adult Safeguarding: Multi-agency policy and procedures for the protection of adults with care and support needs in the West Midlands, WM Adult Safeguarding Editorial Group. HERE.

Fig.1. Adult PoT process – flowchart -



1. Background.

1.1. The Care Act 2014 (implemented in April 2015) introduced a single new statute to replace most existing adult social care law. The care and support statutory guidance[5] formalised the expectations on local safeguarding adults boards to establish and agree a framework and process for how allegations against people working with adults with care and support needs (i.e. those in a position of trust) should be notified and responded to.

1.2. While the Care Act outlines clear legal duties on the local authority to undertake enquiries in certain circumstances where adults with care and support needs are identified as experiencing or being at risk of abuse or neglect, the Care Act does not set out any primary legal duties on the local authority associated with managing allegations against people who work in a position of trust with adults with care and support needs.

1.3. The care and support statutory guidance does, however, set out the expectation for local authorities, their relevant partners (as set out in section 6(7) of the Care Act), and those agencies providing universal care and support services, to 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.

1.4. As such, this framework builds upon existing relevant statutory provision; particularly legislation that governs the lawful sharing of information, employer responsibilities to risk assess and manage the safety of their service and staff, and the Human Rights Act when balancing one right against another, or one person's rights against the interest of society. Any actions and interventions taken to address concerns or allegations that a person in a position of trust poses a risk of harm to adults with care and support needs must be must be lawful and proportionate, and accord with any relevant statutory provision, for example, Data Protection Act 1998, Human Rights Act 1998 and employment legislation.

1.5. Allegations against people who work with adults should not be dealt with in isolation. Any action necessary to address corresponding welfare concerns in relation to an adult involved should be taken without delay and in a coordinated manner.

1.6. The Care Act 2014 Statutory Guidance also requires that 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[6].

1.7 The Care Act 2014 Statutory Guidance reinforces the requirement that if an organisation 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[7].

[5] Care and Support statutory guidance: Chapter 14.
[6] Paragraph 14.126 Care and Support Statutory Guidance
[7] Paragraph 14.127 Care and Support Statutory Guidance / DBS Webpage- click HERE

2. Scope.

2.1. This framework and process applies to concerns and allegations about-

- **a person who works with adults with care and support needs in a position of trust**, whether an employee, volunteer or student (paid or unpaid); and,
- **where** those concerns or allegations indicate **the person** in a position of trust **poses a risk of harm to adults with care and support needs**.

These concerns or allegations could include, for example, that the 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.

2.2. This framework applies whether the allegation relates to a current or an historical concern. Where the allegation or concern is historical, it is important to ascertain if the person is currently working with adults with care and support needs or children and if that is the case, to consider whether information should be shared with the current employer.

2.3. The policy does not cover complaints or concerns raised about the quality of the care or professional practice provided by the person in a Position of Trust (PoT). Concerns or complaints about quality of care or practice should be dealt with under the relevant agency or individual complaint, competence or representations processes.

3. Principles.

3.1. This framework builds upon existing relevant statutory provision. There is no primary statutory duty associated with the position of trust framework so any actions taken must be in line with other relevant statutory provision, e.g. Data Protection Act 1998, Human Rights Act 1998 and employment legislation. Any actions and interventions must be lawful and proportionate in line with statutory provision.

3.2. As with all adult safeguarding work the six statutory principles 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.

3.3. It is important to remember that the person in the position of trust is entitled to ask to see any information held about them. It would be best practice to seek the views of the person whose information you hold unless to do so will endanger an adult with care and support needs or child. It is also good practice to seek the individual's consent to share the information, provide the individual the opportunity to share the information themselves, and to give them the right to reply.

4. Legal framework.

4.1. Confidentiality

4.1.1. The rules on confidentiality, privacy and the need to safeguard personal information arise from both legislation and case law. These enshrine the need for fair and ethical treatment of information where there is a duty of confidence, issues of privacy or where personal information is involved.

4.1.2 The common law duty of confidentiality is not a written Act of Parliament. It is "common" law. This means that it has been established over a period of time through the Courts. It recognises that some information has a quality of confidence, which means that the individual or organisation that provided the information has an expectation that it will not be shared with or disclosed to others.

For information to have a quality of confidentiality it is generally accepted that:

- it is not "trivial" in its nature,
- it is not in the public domain or easily available from another source,
- it has a degree of sensitivity,
- it has been communicated for a limited purpose and in circumstances where the individual or organisation is likely to assume an obligation of confidence. For example information shared between a solicitor/client, health practitioner/patient.

In such circumstances the information should only be disclosed:

- with the permission of the provider of the information; or,
- if the confidentiality requirement is overridden by legislation; or,
- if an effective case 'that it is the public interest' can be made.

4.1.3 Decisions on sharing information must be 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[8].

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

- 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[9].

[8] Paragraph 14.131 Care and Support Statutory Guidance.

[9] Paragraph 14.132 Care and Support Statutory Guidance.

4.2. The General Data Protection Regulation (GDPR) and Data Protection Act 2018.

4.2.1. The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 introduce new elements to the data protection regime, superseding the Data Protection Act 1998.

4.2.2. Information relevant to adult safeguarding will often be data that the Act categorises as "special category personal data"[10], meaning it is sensitive and personal. Wherever possible, individuals and agencies should seek consent to share information, and be open and honest with the individual from the outset as to why, what, how and with whom, their information will be shared. If consent is not given or cannot be gained, the GDPR and Data Protection Act 2018 do not prevent, or limit, the sharing of information for the purposes of keeping adults with care and support needs safe.

4.2.3. The Data Protection Act 2018, allows for sharing of "special category personal data" **without consent** of the data subject for the purpose of safeguarding adults with care and support needs[11]. Information **can be shared legally without consent** if a practitioner or agency is-

- unable to gain consent from the data subject,
- cannot be reasonably expected to gain consent from the data subject, or
- if gaining consent could place an adult with care and support needs (or child) at risk.

4.2.4. Individuals and agencies should consider the following **information sharing principles** to help when making decisions about sharing personal and sensitive information[12]-

Necessary and proportionate

When taking decisions about what information to share, you should consider how much information you need to release. Not sharing more data than is necessary to be of use is a key element of the GDPR and Data Protection Act 2018, and you should consider the impact of disclosing information on the information subject and any third parties. Information must be proportionate to the need and level of risk.

Relevant

Only information that is relevant to the purposes should be shared with those who need it. This allows others to do their job effectively and make informed decisions.

Adequate

Information should be adequate for its purpose. Information should be of the right quality to ensure that it can be understood and relied upon.

Accurate

Information should be accurate and up to date and should clearly distinguish between fact and opinion. If the information is historical then this should be explained.

[10] See also Article 9 of the General Data Protection Regulation.
[11] Data Protection Act 2018, Schedule 1, Para 18.
[12] Content abridged from "Information Sharing: Advice for Practitioners providing safeguarding services to children, young people, parents and carers". HM Government, July 2018.

Timely

Information should be shared in a timely fashion to reduce the risk of missed opportunities to offer support and protection to adults with care and support needs. Timeliness is key in emergency situations and it may not be appropriate to seek consent for information sharing if it could cause delays and therefore place an adult with care and support needs at increased risk of harm. Practitioners should ensure that sufficient information is shared, as well as consider the urgency with which to share it.

Secure

Wherever possible, information should be shared in an appropriate, secure way. Practitioners must always follow their organisation's policy on security for handling personal information.

Record

Information sharing decisions should be recorded, whether or not the decision is taken to share. If the decision is to share, reasons should be cited including what information has been shared and with whom, in line with organisational procedures. If the decision is not to share, it is good practice to record the reasons for this decision and discuss them with the requester. In line with each organisation's own retention policy, the information should not be kept any longer than is necessary. In some rare circumstances, this may be indefinitely, but if this is the case, there should be a review process scheduled at regular intervals to ensure data is not retained where it is unnecessary to do so.

Fig.2. **The seven golden rules to information sharing**

1. Remember that the General Data Protection Regulation (GDPR), Data Protection Act 2018 and human rights law are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately.

2. Be open and honest with the individual (and/or their family/representatives where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.

3. Seek advice from other practitioners, or your information governance lead, if you are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible.

4. Where possible, share information with consent, and where possible, respect the wishes of those who do not consent to having their information shared. Under the GDPR and Data Protection Act 2018 you may share information without consent if, in your judgement, there is a lawful basis to do so, such as where safety may be at risk. You will need to base your judgement on the facts of the case. When you are sharing or requesting personal information from someone, be clear of the basis upon which you are doing so. Where you do not have consent, be mindful that an individual might not expect information to be shared.

5. Consider safety and well-being: base your information sharing decisions on considerations of the safety and well-being of the individual and others who may be affected by their actions.

6. Necessary, proportionate, relevant, adequate, accurate, timely and secure: ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those individuals who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely (see information sharing principles above).

7. Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

4.3. The Crime and Disorder Act 1998

4.3.1. Any person may disclose information to a relevant authority under Section 115 of the Crime and Disorder Act 1998, 'where disclosure is necessary or expedient for the purposes of the Act (reduction and prevention of crime and disorder)'. 'Relevant authorities', broadly, are the police, local authorities, health authorities (clinical commissioning groups) and local probation boards.

4.4. Human Rights Act 1998

4.4.1. Human rights are freedoms which belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society.

4.4.2. In cases of concern or allegations against people who care for adults with care and support needs the Act is relevant when decisions have to be made which consider balancing one right against another, or one person's right against the interest of society. These rights are fundamental and the most important of them are;

- Article 2: Prohibition of torture – No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- Article 6: Right to a fair trial – A person has a right to a fair and public hearing within a reasonable amount of time. This applies both to criminal charges against them and to cases concerning their civil rights and obligations…If it is a criminal charge, the person is presumed innocent until proven guilty according to law and has certain guaranteed rights to defend themselves.
- Article 7: No punishment without the law – A person normally has the right not to be found guilty of an offence arising out of actions which at the time they committed them were not criminal.
- Article 8: Right to respect for private and family life - A person has the right to respect for their family life, their home and their correspondence. This right can be restricted only in specified circumstances.

5. Key roles and responsibilities.

5.1. The Information Owner

5.1.1. The owner of the information relating to the concern or allegation is expected to -

- Consider if the information indicates that any immediate risk management actions are needed, or referrals into adult or children safeguarding processes,

- Consider whether the allegation or concern indicates a criminal offence has occurred or may occur. If so, the allegation or concern must be reported to the Police; early liaison with Police should take place to agree next steps and to avoid contamination of evidence; if a criminal investigation is required, this may take primacy over an agency or organisation's internal investigation,

- Refer to the relevant Local Authority LADO where the information indicates the person also works with and could pose a risk of harm to children,

- Make a decision whether the information should be disclosed to the person in a PoT's employer.
    - When making a decision, consider any known history of conduct, complaints, cautions or convictions that may be relevant to the potential risk.
    - If disclosing, manage this disclosure in line with legal and best practice requirements for information sharing. The Care and Support statutory guidance states that local authority's relevant partners, and agencies providing universal care and support services should have clear policies in line with those from the safeguarding adults board to deal with this area of activity – see section 1.3 above. Some agencies may have well established protocols for sharing information in these types of circumstance – such as the Common Law Police Disclosure process – whereas other agencies may not deal with these issues on a frequent basis and may need to have senior management oversight, and gain legal advice as required, on a case by case basis.

- Where a disclosure is made, notify the relevant service commissioners and regulatory agencies,

- Record the information and decisions clearly, including the rationale for any decision made.

- Records should be maintained in line with internal agency record keeping policies and requirements.

5.2. Employers, student bodies, or voluntary organisations

5.2.1. Any employer, student body, or voluntary organisation who is responsible for a person in a PoT where there is a concern or allegation raised are expected to-

- Respond in individual cases where concerns are raised about people working in a PoT, ensuring that the risk is assessed, investigated where appropriate through internal employment processes, and that risk management actions and identified and implemented as appropriate to the individual case,

- Ensure all adult or child safeguarding concerns that result from a concern about a PoT are reported,

- Where appropriate, notify and refer to external agencies; to the CQC (where the person in a PoT is working or volunteering in a CQC regulated organisation), statutory and other bodies responsible for professional regulation (such as the General Medical Council and the Nursing and Midwifery Council, The Charity Commission) and the DBS,

- Provide feedback at regular intervals to the relevant Local Authority (if there is a related safeguarding enquiry) and to their commissioning agency (if they have one),

- Ensure the safety and protection of adults with care and support needs is central to their decision making,

- 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. Any allegation 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 sources of advice (including legal advice) in place for dealing with such concerns[13].

- Share information in line with these procedures where it is known the person in a PoT also has other employment or voluntary work with adults with care and support needs or children,

- If an organisation 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[14]. For full details of when to refer an individual to the DBS and referral when the situation does not meet the legal duty please visit the DBS website click here.

- At the conclusion of any PoT enquiries, consider if the findings demonstrate evidence of a theme or pattern in the context of past and historic PoT concerns; identify potential themes or system wide issues within the organisation; and ensure that appropriate action is taken by their organisation so that learning from past events is applied to reduce the risk of harm to adults with care and support needs in the future.

- Record the information and decisions clearly, including the rationale for any decision made.

- Records should be maintained in line with internal agency record keeping policies and requirements.

[13] Paragraph 14.126 Care and Support Statutory Guidance
[14] Paragraph 14.127 Care and Support Statutory Guidance

5.3. Service commissioners and regulators

5.3.1. Service commissioners and regulators are expected to -

- Use their contract compliance and regulatory processes to ensure that service providers have the right internal policy and procedural frameworks, and respond appropriately to manage risk in individual cases,

- Monitor the activities of commissioned services in their compliance of this Framework.

- Record the information and decisions clearly, including the rationale for any decision made.

- Records should be maintained in line with internal agency record keeping policies and requirements.

6. Case examples

Case example 1 –

A 39 year old woman is subject to longstanding domestic abuse risks from her partner. Childrens Services become involved due to potential impact on the couple's children. As part of their assessment they identify that the woman works as a care assistant in a care home for older people with dementia.

Childrens Services consider the adult position of trust issues and framework. Childrens Services are the information owner and think through whether they have a duty to make a disclosure to the woman's employer. Childrens Services decide that disclosure is not proportionate in the situation – the woman is in a very difficult domestic situation, is engaging well with Childrens Services to take steps to protect her children, and there is no evidence that either she or the abuse in her relationship would pose a likely risk of harm to the adults in the care home where she works.

Childrens Services have a discussion with the woman and inform her that they will not be disclosing information to her employer, but encourage her to tell her employer herself. The woman agrees to inform her employer about her home situation so that her employer can make a risk assessment, and provide support for her in the work environment.

Case example 2 -

A doctor employed in an NHS hospital is arrested by Police for historical child sex offences. The doctor works with a range of adults in their role, some of whom will have needs for care and support.

The Police are the information owner and decide they do need to disclose the information to the NHS Hospital Trust as the employer of the doctor. The Police inform the NHS Hospital Trust about the arrest for historical child sex offences, and notify the Care Quality Commission as regulator and the local Clinical Commissioning Group as the commissioner of the hospital trust.

The NHS Hospital Trust acts on the information and decides to suspend the doctor immediately. Their disciplinary process is placed on hold while the Police investigation progresses.

Case example 3 -

Wolverhampton City Council receive an adult safeguarding referral from a neighbour of an older woman who lives in Wolverhampton. The concern relates to allegations that the woman's daughter is abusing her mother physically and emotionally.

Wolverhampton CC make enquiries under section 42 of the Care Act, and as their enquiries progress, they find out that the daughter lives in Shropshire and works as a carer for a homecare agency serving people in Shropshire.

Wolverhampton CC are the information owner and decide that - due to the nature of the cruel treatment alleged, that the daughter works with people of a similar age to her mother, and that she works unsupervised with people in their own homes – they do need to disclose the information and allegations to the daughter's employer.

By this stage of their enquiries, the daughter is aware that concerns have been raised about the way she treats her mother, so Wolverhampton CC try to engage directly with the daughter to provide her with an opportunity to disclose herself to her employer, or to gain consent to share the information. The daughter refuses to do this, so Wolverhampton CC inform they are sharing the information without her consent and make the disclosure directly to the registered manager of the homecare agency in Shropshire.

Wolverhampton CC notify Shropshire County Council and the Care Quality Commission. Shropshire County Council and the Care Quality Commission can follow up the issue with the homecare agency (under contract compliance/ regulatory processes) to gain assurance that the agency has risk assessed the issue properly and managed any identified risk to users