

Foreword

Southwark Council, the Southwark Safeguarding Children Board and the Southwark Safeguarding Adults Partnership provide strong leadership to local agencies in the public, voluntary, independent and private sectors to ensure that children and vulnerable adults receiving services within Southwark are safeguarded.

Since 2004 all Southwark organisations have been asked to adopt the Safe Organisation Checklist and the Boards have provided multi-agency training and materials for agencies in safe recruitment and the management of allegations against staff or volunteers who work in positions of trust with children and vulnerable adults.

I take my leadership responsibilities for safe HR practice very seriously and have worked hard to ensure that from the HR perspective Southwark is at the forefront of promoting employer responsibilities for safe recruitment, selection and management of people who work closely with children and vulnerable adults.

In addition to the safe recruitment guidance, the self audit tool and HR safeguarding tool for contract managers, this guidance on safer disciplinary decisions has been updated in line with recent national changes. The guidance is intentionally short and signposts to key sources to ensure the most up to date information is referred to at critical decision points.

For Southwark Council managers and staff this guidance is the Council's agreed procedure to be followed in all cases. For partner members of the Safeguarding Children Board and the Safeguarding Adults Partnership the guidance is advisory and best practice in this area but all are urged to adopt its principles.



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Further advice can be obtained from the Southwark Safeguarding Children Board (SSCB) or the Safeguarding Adults Partnership (SAP).

Safeguarding in Human Resource Management Allegations and Disciplinary Process

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Executive Summary

As soon as you become aware that a member of staff may be involved in abuse or potential abuse of a child or adult, or has behaved in an inappropriate manner indicating a possible safeguarding concern, you must refer to the Senior Management Team and either the Local Authority Delegated Officer (LADO) or the Adult Safeguarding Co-Coordinator as soon as possible. Where appropriate, referral should also be made to the anti Fraud Manager and the relevant Human Resources Manager.

When made aware of an allegation of abuse you must refer to the safeguarding standards in place, including the relevant Protection Policy, i.e. the London Child Protection Procedures or the London multi-agency policy and procedures to safeguard adults from abuse. Links to both are available on the Southwark Council website.

As a manager you should also be aware of your responsibility as an employer in relation to the relevant organisational Disciplinary Procedure and Code of Conduct,

The definition of a 'vulnerable adult' changed with the Protection of Freedoms Act 2012 – an adult is defined as vulnerable "when in receipt of a regulated activity in relation to vulnerable adults ". It is important to recognise any adult can be subject to domestic, emotional, physical, financial abuse etc. and does not have to be defined as vulnerable.

Clarify standards, set markers and establish a line that allows questions to be asked. Managers need to develop a safe culture, reinforced through performance management, which embraces safeguarding and communicates a clear framework of awareness. This involves providing staff with opportunities to reflect on practice and feel able to self-report and challenge others. Working towards staff thinking 'what if I'm right?' rather than 'what if I'm wrong?'

Keep the safety of the child / vulnerable adult central to your actions – remember you may not have absolute proof but you have a duty to act if there is a possibility that abuse has taken place or could take place under the circumstances.

You must balance the welfare of vulnerable people against the rights of individual members of staff who have the potential to abuse them.

Investigation teams, decision makers and disciplinary panels must have the necessary independence, competence and knowledge to make safe disciplinary decisions.

Ensure there is a thorough investigation that must continue even if the employee retires or resigns before you are able to complete it. You have a duty to ensure that people cannot easily move from one organisation to another where it is believed they may be abusing children or adults. Compromise agreements which allow a person to leave quietly are not acceptable.

The London Child Protection Procedures (current 4th edition) Chapter 15 gives the framework for managing allegations against staff who work with children. "Allegations against staff" also covers allegations against agency workers and health services staff; including in their personal lives.

Compliance with the requirements should ensure that where allegations of abuse are made, or where there is a suspicion, organisational responses are prompt, thorough, independent and proportionate to the issues of concern.

The DfES statutory guidance about dealing with allegations of abuse against teachers and other staff was revised in October 2012 and can be accessed on DfE's website.

All Council Departments, commissioned services and local agencies are required to abide by the London Child protection procedures as published on the southwark.gov.uk website

1. Safeguarding in Human Resource Management

Background and Introduction

“Comprehensive disciplinary procedures and rules, rigorously applied, safeguard in two ways: staff on appointment know the circumstances which are likely to trigger disciplinary action, staff who abuse, fail to protect or neglect can be disciplined for this and ultimately dismissed”, Utting 1997

The term ‘safeguarding’ can be applied in a number of contexts. In Southwark the term is used in the context of protecting children and vulnerable adults from harm and being a safe organisation with safe HR policies, procedures and practices that are known and understood. Southwark has a Safe Organisation checklist and a specific HR Sub Group of the Safeguarding Children Board and Safeguarding Adults Partnership responsible for disseminating safe HR practice in Southwark.

This document sets out the legal obligations and standards expected of **all** managers and HR practitioners responsible for setting and maintaining standards of conduct in the workforce. Whilst this document necessarily signposts to Council policies and procedures, it also contains best practice initiatives that the Council would expect commissioned services and partner organisations to adopt to ensure safer working with vulnerable people. Partner organisations must ensure that their actions accord with their own policies and procedures e.g. disciplinary, whistle-blowing etc, and that those policies and procedures are updated as new developments arise.

This document is about raising awareness and reducing risk by outlining what has to be in place to ensure there are clear expectations, standards and robust practices to protect vulnerable people. This means deterring and preventing unsuitable people being put in positions where they can cause harm and, on the rare occasions where unsuitable people are found in the organisation, they are exited effectively and are prevented from moving on to another organisation in a role where they will have access to vulnerable people afresh.

The implications of not having rigorous HR Safeguarding systems in place are:

- Lifelong physical, sexual or emotional harm to service users (including possible death)
- Mental illness, criminal behaviour, social exclusion and chaotic or harmful ongoing personal relationships (as partners or parents) as a result of such damage
- The need for intensive therapy, psychiatric treatment or other support services
- Compensation claims against employers, court action and legal expenses
- Public or other Inquiries; and
- Staff and managers’ time dealing with the outcomes and processes
- Negative affect on morale of staff within the service concerned
- Employment Tribunals and negative publicity

Safe Organisations Checklist

In December 2004 the **Safe Organisation Approach** was launched, as reflected in the **Safe Organisation Checklist** (Appendix 2). This is the agreed inter-agency approach of the **Southwark Safeguarding Adults Partnership** and the **Southwark Safeguarding Children Board**. As part of this approach the Council seeks to continuously assure itself that rigorous systems are in place across the Borough to ensure the fair investigation, management and adjudication of allegations of abuse or malpractice which may result in harm to people living in Southwark.

Safer Disciplinary Decisions Checklist

A checklist of key 'dos and don'ts' is attached at Appendix 1 of this document. The checklist sets out best practice safeguarding standards and has been developed in the light of many Inquiries and Employment Tribunals. The checklist sets out how the Council expects those with safeguarding responsibilities to act. Southwark as a Council also believes that 'safeguarding is everybody's businesses, from those working in direct care, to those support services and also those in community facing work; street cleaners, painters and anyone who is in a position to witness abuse by one individual over another

Dealing with Allegations of Abuse against Children or Vulnerable Adults

The employment implications of managing an allegation of a member of staff are likely to be governed by the disciplinary procedure. Actions under this must be taken within the context of the relevant Protection Procedures. Where there is a possibility that a crime may have been committed the police should be involved. Guidance and advice on policies can be seen on the Council website under 'safeguarding'.

Advice should be sought from the Local Authority Designated Officer (LADO), Quality Assurance Manager (Child Protection) (020 7525 0387) or the Adult Protection Co-ordinator (020 7525 3314) in each case. In all cases involving allegations against staff, HR should be involved. In matters relating to financial abuse, Southwark Council has an agreed HR/ Fraud Protocol to underpin the fraud response plan which ensures the key players are involved at the right time, thus enabling 'safe' decision-making.

Some General Considerations when dealing with allegations of abuse

Child abuse. There are four main types of child abuse: physical abuse, sexual abuse, emotional abuse and neglect and a child may suffer more than one of them. The abuser may be a family member, or they may be someone the child encounters in a residential setting or in the community, including during sports and leisure activities. It could be someone in a position of power or influence, including someone in uniform or wearing a badge associated with an organisation. An individual may abuse or neglect a child directly, or may be responsible for abuse because they fail to prevent another person harming that child. In addition an individual may exhibit behaviour that might reasonably suggest that they present a safeguarding concern. Examples of this might be where a staff member is arrested by the police for domestic abuse in their home or for accessing child pornography.

Adults' abuse. Abuse in an Adults case is defined as a violation of an individual human and civil right by any other person or person (No secrets report DH 2000). It can manifest itself in physical abuse e.g. where the force results in pain or injury or a change in the person's natural physical state. It can also manifest itself in financial or material abuse i.e. where one person uses another person's property, assets or income without their informed consent, or making financial transactions that they do not understand (unless this is legally sanctioned and in accordance with the fiduciary duty owed to the incapacitated [person.]

In an employment relationship, any kind of abuse perpetrated by an employee is likely to be a breach of disciplinary rule, a breach of contract and sufficiently serious for an employer to invoke the disciplinary procedure. NHS statistics show that nationally, in 2010/11 29% of alleged perpetrators of abuse against vulnerable people involved those working in health or social care

In an employment / disciplinary context, the standard of proof required is that of the balance of probability (summed up as "is more likely than, than less likely than").

In an employment context, we may not have 100% proof that abuse has occurred (and there may be reasons why it is not appropriate for cases to go to court), however, experience shows that there is often evidence that it is more likely than not that abuse has occurred (or will occur), upon which a sound employment judgement can be made.

For example, it was known that Ian Huntley had abused previously but had not been convicted. A proper risk analysis would have shown a probability of future abuse, especially as past abusive behaviour had gone effectively unchecked.

Also, research / work with paedophiles and murderers in treatment, post-conviction, shows that they will often admit to a history of offending before being caught and convicted – this can often include being suspected but not properly assessed or managed through an employment / disciplinary route where they are in the caring professions. (Source: Ray Wyre and Lucy Faithful Foundation). Investigations into alleged abusive behaviour by employees are most likely to result in denial, rigorous defence and advocacy as they are likely to lead to loss of current employment and also long-term career if proven – even on a balance of probability. They are more likely, therefore, where there is not a criminal conviction to lead to appeals or tribunals.

The investigatory / disciplinary process must be robust, well informed and able to ensure the most rigorous standards for safeguarding service users while at the same time ensuring a balance of justice and fairness for the employee. Inquiries conclude that where there is evidence on a balance of probability that abuse or malpractice to a service user has occurred, the organisation's priority must be to safeguarding service users.

Ensuring effective, informed, fair and critical judgement in the disciplinary investigation, hearing and any subsequent appeal process must therefore be a priority for those in a corporate parenting role. Those involved should be sufficiently knowledgeable or properly trained and able to exercise impartial judgement informed by human rights, duty of care, rigorous risk analysis and good employment principles.

The balance must be to ensure the welfare of current and future service users as well as the rights of the employee who is potentially facing disciplinary (and possible criminal) investigation and charges. Expertise in this area is probably best built up over time and through experience, as is the case in exercising judgement in the criminal justice system. The process should also be able to call upon expert advice, including risk analysis where there is confusion or doubt.

Similarly, panel members and HR staff giving advice to panels on these types of issues need to be competent and sufficiently experienced or knowledgeable about managing risk and employee rights, in order to safeguard the best interests of all stakeholders and the organisation.

Allegations against Staff (think carefully before you act)

There are occasions where the allegations are not just an employment concern but also may be a criminal or child / vulnerable adult protection matter and thus additional procedures will need to be integrated.

In some situations it would be unwise to alert the employee to the allegation before other interested parties have assessed how the allegation should be managed most effectively on a cross agency basis. For example, discovering an employee accessing pornography in work may be a straightforward misconduct matter on the face of it. But, suspending the employee may jeopardise a criminal investigation into the perpetrators of child pornography more widely.

Attention is drawn to the London Child Protection procedures and the appended 'Checklist for Safer Disciplinary Decisions.' (Appendix 1)

The importance of following the relevant policies and procedures cannot be over emphasised. There are some important lessons that have been learnt through employment case law that show the importance of getting it right from the outset and sustaining this to conclusion. The costs of getting it wrong are human as well as financial. The cases referred to (appendix 3) may prove useful background reading for those managing investigations and dealing with disciplinary cases and will help build confidence in dealing with difficult issues

Key points are around taking sensible informed decisions relating to:

- Who to tell and which procedures govern the approach? Determine who need to know
- Following the strategy meeting, ensure proper consideration of alternatives to suspension e.g. placing the employee on restricted duties where appropriate
- Wherever possible and not prejudicial, conduct a preliminary investigation of the facts so as to guard against knee jerk reactions to allegations
- Suspension from duty, normally on full pay, if there is no safe and reasonable alternative
- Act promptly and seek to obtain first hand information via witness statements ideally
- Programme and stick to a timely investigation; keep in touch with suspended employees
- Ensure careful management of the interface between the child and adult protection procedures and the disciplinary procedures, with input from professional safeguarding leads/HR/Legal as necessary
- There must be a reasonable and sufficiently thorough investigation in accordance with the relevant procedure and ACAS guidelines
- Questioning relevant witnesses and clearly putting the case to the 'accused' as soon as the facts are established - the issue should not first be 'put to' the alleged perpetrator at the disciplinary hearing
- A reasonable investigation does not mean 'leave no stone unturned' but should be sufficiently thorough and related to the issues at hand
- The following definitions should be used when determining the outcome of **allegation** investigations:
 - a) **Substantiated:** *there is sufficient identifiable evidence to prove the allegation;*
 - b) **False:** *there is sufficient evidence to disprove the allegation;*
 - c) **Malicious:** *there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;*
 - d) **Unfounded:** *there is no evidence or proper basis which supports the allegation being made*
 - e) **Unsubstantiated:** *there is insufficient evidence to prove or disprove the allegation;*
- An employee is entitled to be represented by a trade union official or accompanied by a work colleague. There may be occasions where consideration should be given to whether and at which point to permit legal representation. For example where the allegation may require referral to DBS/HCPC and prevent them from working with children or vulnerable adults and/or removal of registration from a professional body. Check the contract, the organisation policy or procedure on this.
- There is no requirement for an employer to wait for the outcome of a criminal case- a disciplinary hearing can be convened before the criminal process is concluded.
- As a general rule in the Council a 'one word against another' case will result in charges being levelled and a fair and reasonable hearing before a sufficiently experienced disciplinary panel to determine who is the more likely to be telling the truth.
- Disciplinary action must always be proportionate to the breach of rule / misconduct e.g. a charge of gross misconduct can be levelled where the conduct is of such a serious nature that it fundamentally destroys the contractual relationship between the employer and employee.

Unreasonable Delays in disciplinary process

The disciplinary process should be dealt with as quickly as possible and the current Council guidance states that this should be within 30 days, however more complex or difficult cases (for example, where fraud or a criminal offence is alleged) may take longer. Unexplained delays in the disciplinary process will always be viewed negatively by employment tribunals, and this could be considered as not following the contractual procedure. This may result in the tribunal increasing any award of compensation by up to 25% for an employer's unreasonable delay.

2. Essential Ingredients of Fair Disciplinary Hearings

- Every advisor or manager adjudicating or advising at a hearing is expected to act reasonably, in good faith, in the interest of fairness to the business / child/ client/service user and to the employee
- There should be clear disciplinary charge/s that are referenced against the disciplinary rules so it is evident where there is a breach
- Those involved in panel decision making should have no prior involvement that might prejudice their ability to deal with the hearing fairly
- Panels must hear both sides of the case and surface all relevant facts so as to weigh up pros and cons as objectively as possible
- The Panel Chair must ensure the decision reached is one within the powers of the panel (under the terms of the relevant procedure)
- To adjourn for further information if necessary, or to refer a case back for further investigation if the original investigation is flawed
- To appreciate the 'band of reasonable responses of a reasonable employer, in all the circumstances' test, which a tribunal may later apply if dismissal is the outcome

Key questions in considering a decision

- Has there been as much investigation as is reasonable in the circumstances?
- Have the requirements of the procedure been properly complied with up to this point?
- Has sufficient regard been paid to the explanation put forward by the employee?
- Do I genuinely believe that the employee has committed the misconduct as alleged?
- Are there reasonable grounds upon which to sustain that belief on the balance of probabilities (is it more likely than, or less likely than)?

A yes answer to each of the above will mean a finding that the employee has indeed committed that act of misconduct and the charge is proven. The next consideration is what to do about it.

The following 3 questions will help:

- Is the misconduct / capability sufficiently serious to justify the decision contemplated?
- Has sufficient regard been paid to any mitigating circumstances put forward by or on behalf of the employee? Make sure the panel understand what the mitigation is, including previous service, track record and insight into the misconduct
- Is the decision within the band of reasonable responses of a reasonable employer in these circumstances? In all the circumstances what sanction is the appropriate one given the nature of misconduct (training; guidance, warning, dismissal, demotion etc)

In all cases you will need to show that a fair and reasonable decision was reached upon consideration of all the evidence and with sufficient regard to the explanation offered by the employee. Employment Tribunals look at the way a decision was reached and ask if the employer acted within the range of responses available to a reasonable employer (the 'band of reasonable responses'). In dismissal cases it will be: was the decision to dismiss proportionate and reasonable in all the circumstances?

3. Southwark Council: Business Managers Guide

Southwark Council policies and procedures are found on the *Source*. Specific relevant sections to be read in conjunction with this guide are:

- Disciplinary Procedure (misconduct): Capability procedure (for competence / work performance)
- Code of Conduct; Whistle blowing procedure; Anti-Fraud response plan
- Safeguarding Children and Adults pages on the website
- Agency workers (if the allegation is against an agency worker)

Southwark Internal Controls Expected - Safer Disciplinary Decisions

Southwark has instituted the following controls to aid 'safer' decision making:

- All those involved in disciplinary investigations and hearings should have had appropriate knowledge and / or experience of those procedures, with access to appropriate professional advice as required
- Suspension decisions will be made by the Head of Service and HR following a risk assessment, including equality analysis and strategy meeting/discussion
- Witness statements will be taken at the onset
- Decisions on levelling charges and taking disciplinary action (or otherwise) will be taken by the Manager who commissioned the investigation (or senior) and not by the investigating manager. Reasons for decisions **not** to take abuse cases to panels will be fully documented
- All disciplinary panels considering charges of gross misconduct will be sufficiently balanced and comprise:
 - an experienced Chair
 - a sufficiently senior impartial member who may have relevant specialist expertise; or with some additional skill / knowledge / input
 - an HR advisor with knowledge of safeguarding
- Any disciplinary hearing will have a note-taker and the notes cleared by the Chair
- Copies of written warnings remain on the employee personal file even when the warning has expired. Guidance interviews remain on file
- The Management Statement, in abuse cases, should ensure that the 'bigger picture' is reflected, to include appropriate references to statute, other guidance (e.g. Warner, Home Office, OFSTED etc), the role of the corporate parent and other relevant care references. In some cases a statement under the authorage of the Statutory Director or independent expert will be appropriate
- In all misconduct disciplinary appeals, the relevant Head of Service / Divisional Senior Manager and the HR Director will be provided with the Management Statement and accompanying papers, in good time to quality assure the contents before the Appeal agenda is printed
- Details of all abuse cases to be provided to the relevant Senior Management Team member.
- Copies of safeguarding related disciplinary charge letters to be sent to the Strategic Director and Executive HR Manager
- Copies of all safeguarding dismissal letters to be sent to the Strategic Director and HR Director
- Where charges are admitted, the case must still be heard in at least summary form, to ensure all facts are established and seriousness determined. The case must not go just to mitigation and disciplinary sanction if one of gross misconduct

4. Referrals to Disclosure & Barring Service

In December 2012 the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged into the Disclosure and Barring Service (DBS). The DBS will make independent decisions following referrals from employers and other organisations and the notification of relevant (automatic barring) offences.

If an employer or representative of an organisation has concerns that an individual has caused harm or poses future risk of harm to vulnerable groups including children, a DBS referral form will need to be completed. More information about referrals and the referral process can be found on the DBS site. An employer is legally obliged to inform the DBS if we

- Remove someone we employ or for whom we are responsible, from a regulated activity, or
- If they leave while under investigation for allegedly causing harm or posing a risk of harm

Failure to do so is a criminal offence and will carry a significant penalty.

It is important to note that suspension is not a trigger for referral to DBS.

5. Referrals to the Health & Care Professions Council and other Registration bodies

Most professional bodies have Codes of Conduct or standards their members are obliged to adhere to. As the HCPC place explicit responsibilities upon employers to notify misconduct and potential or actual criminal convictions. Managers and HR need to be clear about such requirements and make referrals at the appropriate juncture depending on the nature of the misconduct relating to the relevant bodies Code. The HCPC places a responsibility on registered social workers to notify any potential or actual convictions; the employer has responsibility to notify misconduct.

6. Referrals to the Teacher Agency / General Teaching Council Wales

When a report is made to the DBS about a teacher in England or who is registered with the General Teaching Council for Wales, it is determined whether the case involves issues relating to the safety and welfare of children and, if it does not, it will be passed to the Teacher Agency or the General Teaching Council Wales, which will then consider the case under its disciplinary functions.

Sources of additional information

Guidance in this area is subject to regular review; reflecting developments in practice and legislation. Professional Leads are encouraged to familiarise themselves with industry documents and keep in touch with changes. Using sites include:-

Disclosure & Barring Service <http://www.homeoffice.gov.uk/crime/vetting-barring-scheme/>
Children's Workforce Development Council. www.cwdcouncil.org.uk .
Department for Children, Schools & Families
Health & Care Professions Council <http://www.hpc-uk.org/>
Department of Health www.dh.gov.uk

Southwark Safeguarding Children Board (SSCB)
Tel: 020 7525 3306
Fax: 020 7525 3328
Email sscb@southwark.gov.uk
Website: <http://www.southwark.gov.uk/safeguardingchildren>

Southwark Safeguarding Adults Partnership (SAP)
Tel: 020 7525 1754
Fax: 020 7525 3564
Email: safeguardingadultscoordinator@southwark.gov.uk
Website: <http://www.southwark.gov.uk/safeguardingadults>

Appendix 1

Checklist 1: Safer Disciplinary Decisions

A protective strategy includes disciplinary procedures which deal effectively with offenders (Utting p 1)

- Inform staff on appointment of code of conduct, organisational/ service rules, policy and procedures on discipline, capability and suspension from duty, whistle blowing
- Inform staff that safeguarding allegations will be pursued within notice period and investigation will be completed **even if** employee resigns
- Ensure decision makers are aware that outcome of criminal prosecution will not determine disciplinary sanction / there is no need to wait as the burden of proof differs
- Ensure appeals panels for staff dismissed for misconduct or unsatisfactory care practice include the Independent Chair and others with knowledge of child / vulnerable adult care and corporate parent responsibility to safeguard (the Safeguarding Disciplinary Appeals Panel)
- Do not permit someone considered unsafe to work with children to transfer to work with other vulnerable groups or vice versa without a Risk Assessment and consideration of restrictions that may apply from DBS regulations
- Retain records of disciplinary offences or concerns and pass them on to a potential employer where there has been a legitimate request for information e.g. references
- Where information transfers under TUPE, broadly all that is 'done to' an employee e.g. disciplinary / investigation, suspension transfers too
- Expired / spent warnings remain on file and are not removed from personal files – even when TUPE transferring
- Place permanently on employees file all allegations, findings, written and verbal warnings concerning abuse
- Alert other potential employers in references about staff leaving employment about whom there may be safeguarding concerns
- Details of discussions with staff about criminal or other declarations will be retained on personal files, with the SMT / HRM 'signed off' risk assessment / decision to appoint where convictions are known and the appointment has gone ahead
- Employers are required to refer to the DBS outside the disciplinary process e.g. where the person retires/resigns before the employer has an opportunity to complete the investigation or undertake a disciplinary hearing, but the employer would have dismissed or considered dismissing.
- Employers are required to refer to the DBS following disciplining or dismissing staff where the criteria for inclusion are met. Where the matter relates to an agency worker the hirer will not be responsible for disciplinary processes, but must report concerns to the Agency and it is good practice to monitor where this should be referred to the DBS.
- Make sufficient resources available to fulfil responsibilities when a safeguarding disciplinary issue arises – expert advice, trained investigatory resources
- Fast-track disciplinary investigations and ensure competently undertaken in accordance with procedural requirements, and where necessary any police restrictions
- Do not rush into suspension. Conduct a preliminary investigation and make an informed decision based on risk

- Keep in touch with suspended staff and offer appropriate support and assistance – you have a duty of care to them too
- Ensure early notification of safeguarding cases to Lead Child Protection and Vulnerable Adult leads – either personally or via Senior Management / HR
- Ensure HR involvement in the Strategy Meeting so employment implications are addressed and integrated correctly. Involve anti fraud as relevant in case strategy meetings also
- Have good systems for ongoing management of staff, agency workers, contractors and volunteers; be aware of safeguarding issues and share lessons from the inquiries
- Obtaining work references for volunteers and checking identity
- Where agency workers are suspected of abuse, investigate and report. Employment agencies have a legal duty to refer disciplinary or other matters that are cause for concern to the DBS, where criteria are met. Compliance should be monitored.
- Ensure staff are clear about what is required of them with respect to their relationships with, and behaviour and attitudes towards children and vulnerable adults
- Review and amend operating rules and Code of Conduct to reflect changing practice / policy in the light of national and local lessons learned
- Ensure supervision, performance management, training and feedback to staff on their performance and customer focused behaviour
- Ensure robust investigative, disciplinary and criminal procedures when there are allegations against staff and to ensure such allegations are dealt with properly
- Ensure that staff are not encouraged to leave instead of a thorough investigation. Staff must be made aware that even were a resignation received the employer would continue to pursue the investigation, which may extend beyond the termination date. The evidence shows that if alleged abuse or poor performance is not investigated and dealt with thoroughly then perpetrators can often go on to abuse in another employment
- Establish good communication between agencies and good intelligence gathering where there are allegations and findings of abuse but which do not necessarily result in a conviction
- Listen to children / adults and their carers – who may not always find it easy to tell us about what has happened to them, or who may not be believed, especially if they are vulnerable
- Have effective complaints and genuine whistleblowing systems

Appendix 2

Safe Organisation Checklist

Protecting children and vulnerable adults from harm

A safe organisation:

Ensures that its governing body, all of its employees, commissioned or contracted agents and volunteers or adult participants are aware of their responsibilities to safeguard children and vulnerable adults.

This is done through:

- Safe recruitment/selection practice (including but not only rigorous checking of applications, CVs, references and appropriate DBS checks) – including the training of those who recruit staff to work with children or vulnerable adults
- Clear expectations on staff with regard to personal conduct and promoting the well-being of children and adult service users
- Good induction systems and ongoing training/updates for staff (and others) in minimum standards in child protection, even where the primary service users are adults who are parents (not children)
- Clear access to guidance / procedures for child protection and protection of vulnerable adults and awareness of local protocols and systems for information sharing and referral
- Listening to the concerns of service users especially children, their parents, and vulnerable adults with an open mind and promotion to service users of a policy/culture of safeguarding children and the vulnerable as paramount
- Good supervision of staff/volunteers
- Clear and accessible complaints and whistle-blowing procedures
- Adherence to agreed local procedures for investigating allegations of harm to children or vulnerable adults by persons in positions of trust - including independent advice and referral to the police as necessary
- Good record keeping (including decision-making about concerns / allegations) and database systems
- A formal and independent review process for learning from serious untoward incidents with regard to abuse of children or adults by those in a position of trust
- Regular audits of the above to ensure compliance
- Leadership/accountability in a named senior manager and clear access to specialist advice about child protection or the protection of vulnerable adults (externally if not available within the organisation)

Appendix 3

Some Case Law to Reflect Upon

Example 1 - A v B (Delay in investigation)

In **A v B**, the *Employment Appeals Tribunal* held that an employer's investigation into an employee's alleged misconduct was not reasonable in all the circumstances and, accordingly, his dismissal was unfair.

Mr A was employed by a local authority as a residential social worker from 1995. In 1997, the authority was told that a child had stayed at Mr A's home with a 14-year-old girl ("Miss B") who was resident at the children's home where Mr A worked. Mr A denied that this had happened but, in June 1997, he was suspended pending an investigation by the authority. In considering whether such an investigation is reasonable, the *seriousness of the allegations* against the employee and their potential effect on his or her future are relevant, and a *most rigorous investigation* should be carried out where there may be grave consequences for the employee.

Whether an employer has acted reasonably in carrying out such an investigation involves a *consideration of any delays*. In this case, a decision to dismiss taken two-and-a-half years after the employee was suspended pending investigation was grossly improper, as it may have prejudiced the employee.

Furthermore, the employer failed to interview all the individuals who could have given relevant evidence, or to disclose to the employee statements inconsistent with the evidence against him, and which could have strengthened his defence. Such disclosure is particularly important where the employee is suspended and therefore unable to contact potential witnesses.

(See also *Grudy v Keir Street Services*)

Example 2 - Gogay v Hertfordshire County Council (Knee jerk suspension)

The suspension of a care worker in a children's home by her local authority employer, pending the outcome of an investigation into an allegation of child sexual abuse, amounted to a breach of the implied term of trust and confidence in her contract of employment, holds the Court of Appeal in *Gogay v Hertfordshire County Council*. To be told by one's employer that one has been accused of sexual abuse is clearly calculated seriously to damage the relationship of confidence and trust between employer and employee, and there was no reasonable and proper cause to do that in this case.

Hale LJ did not want local authorities to feel in any way inhibited in making the inquiries they feel are appropriate to safeguard the children in their care. Nor should there be any doubt that, if there is a conflict between the interests of a child in their care and the interests of an employee, the interests of the child should prevail. But the employee is entitled to something better than the knee-jerk reaction that occurred in this case.

Example 3 - Whitbread plc v Hall (Admitted misconduct)

In a case where misconduct is admitted by the employee, the requirement of reasonableness in s.98(4) of the Employment Rights Act 1996 relates not only to the outcome in terms of the penalty imposed by the employer, but also to the process by which the employer arrived at that decision, holds the Court of Appeal in *Whitbread plc (trading as Whitbread Medway Inns) v Hall*. Put another way, the employment tribunal should not simply ask whether the outcome fell within the 'band of reasonable responses' test, but should also apply that test to the procedure used in reaching that decision.

Example 4 - Welfare Society v McDonald (Admitted misconduct)

An industrial tribunal 'slavishly' applied the *British Home Stores Ltd v Burchell* guidelines in holding that a dismissal was unfair because the employer did not undertake a reasonable investigation of an employee's misconduct before dismissing him, holds the Employment Appeals Tribunal in *Boys and Girls Welfare Society v McDonald*. The employer's decision to dismiss was based on the employee's own admissions. In those circumstances, where there was little conflict as to the facts, it was not appropriate for the *Burchell* guidelines to be applied in the way they were.

Furthermore, the tribunal failed to take account of the overriding principle that a dismissal will be fair if, in all the circumstances, the employer acted within the range of reasonable responses open to it.

Example 6 – G, R v X School (Allowing legal representation)

In the judicial review proceedings below the judge reasoned that as the outcome might affect the claimant's ability to practice his profession in the future, because it might result in being placed on a barred list, such proceedings were a single procedure for the purposes of Article 6 of the ECHR and so the claimant should be allowed legal representation. However this was overturned by the Supreme Court who ruled that Article 6(1) did not apply to the disciplinary proceedings but rather the ISA's proceedings.

See also - Kulkarni v Milton Keynes Hospital NHS (Allowing legal representation)