

Handling
safeguarding
issues

Guidance for
HR & line managers

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Introduction

Safeguarding issues can be hard to handle. Simply understanding where they fit in the broader context of employment law can be difficult enough. This guide takes you through this area to help understand what is and what is not safeguarding, and the policy and process impact of that distinction.

This guidance is aimed at HR professionals entering an environment involving safeguarding for the first time, and operational managers who wish to gain a better understanding of the employment law dimension to handling such sensitive and important issues.

It assumes the reader is pretty much up to speed on how to handle an investigation, draft an invitation to a hearing, and hold a hearing to produce an outcome. It isn't intended to cover such basics in employment law, but we have links available to Co-operatives UK's guidance in those areas.

This guide doesn't cover recruitment and vetting, apart from how an employment issue may lead to future consequences for those seeking employment in a safeguarded environment.

The guide isn't intended to be and should not be acted upon as legal advice. Co-operatives UK recommend that specific legal advice is taken covering the individual circumstances of any case. Co-operatives UK members can take advice from us, for further details see the information box on the previous page.



There are very few specific legal provisions that you need to know

Some relief; there are few 'special' legal requirements to know when working in a safeguarding environment.

The only specific legislative requirements are the vetting and barring scheme operated by the Independent Safeguarding Authority (ISA) and the relevant provisions of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, specifically regulation 13, which covers safeguarding service users from abuse and improper treatment.

Whilst case law has given some further relevant guidance which is always helpful, that guidance is not new, they are an operation of existing legal requirements, e.g. those covering what is a fair dismissal.

A fair dismissal is defined under section 98 of the Employment Rights Act 1996:

Does the reason for dismissal:-

"justify the dismissal of an employee holding the position which the employee held"

which

"depends on whether in the circumstances (including the size and administrative resources of the employer) the employer acted reasonably or unreasonably in treating it as sufficient reason".

Our emphasis. The point is that the existing statutory framework already covers sensitive and important issues, wherever they may be found, and therefore encompasses safeguarding.

Generally a manager experienced in disciplinary matters has skills easily transferred into a safeguarding environment.

What is safeguarding?

Whilst there are few specific legal requirements, it helps to know what safeguarding is.

Safeguarding adults includes:

- > Protecting their rights to live in safety, free from abuse and neglect. People and organisations working together to prevent the risk of abuse or neglect, and to stop them happening.
- > Making sure people's wellbeing is promoted, taking their views, wishes, feelings and beliefs into account.
- > Working with partners such as the Care Quality Commission (CQC), police, local councils, health agencies, other regulators and government departments (including the ISA's Disclosure and Barring Service (DBS))

(Source: Care Quality Commission)

Connections with other authorities

We're not suggesting it's simple. However, the complexity comes from the duty of referral of certain matters to other stakeholders, not from a complicated legal backdrop.



Managing a potential safeguarding issue means managing the connections with and interests of the Care Quality Commission (CQC), police, local councils and health agencies, not to mention the organisation itself, the employee involved, and the service user.

This is what is unique in a safeguarded environment. An ordinary employer usually has only to consider their employee, their business, and in some cases their customer.

The referral requirements mean that some difficult questions will need to be considered:

- > When should each stakeholder participate and how?
- > What agreements must you comply with in relation to service provision?
- > How does that sit with an employer and employee, handling the employment and deciding what to do?

Usually there is a 'panel' to ensure due engagement through a single point of reference, for example a Safeguarding Adults Board. It is important to know what is a safeguarding issue and what is not. There is a duty to refer safeguarding matters to certain authorities which is absolute.

Certain care standards, which are not safeguarding issues, may also need to be referred. An agreement with a local authority / health authority usually sets out all of the issues out which must be referred to them. But don't assume that everything you are required to refer is a 'safeguarding' issue, some are and some aren't. Innocent medication mistakes are a breach of standards of performance, as opposed to safeguarding issues, but may need to be referred to some of the relevant authorities through the panel. However, they are unlikely to trigger the duty to refer to the Independent Safeguarding Authority / Disclosure and Barring Service the police.

There is not much law on safeguarding, but what does the law say?

Firstly, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 states:

Regulation 13, safeguarding service users from abuse and improper treatment

Providers must have a zero tolerance approach to abuse, unlawful discrimination and restraint. This includes:

- > neglect
- > subjecting people to degrading treatment
- > unnecessary or disproportionate restraint
- > deprivation of liberty.

Providers must have robust procedures and processes to prevent people using the service from being abused by staff or other people they may have contact with when using the service, including visitors.

Where any form of abuse is suspected, occurs, is discovered, or reported by a third party, the provider must take appropriate action without delay. The action they must take includes investigation and/or referral to the appropriate body.

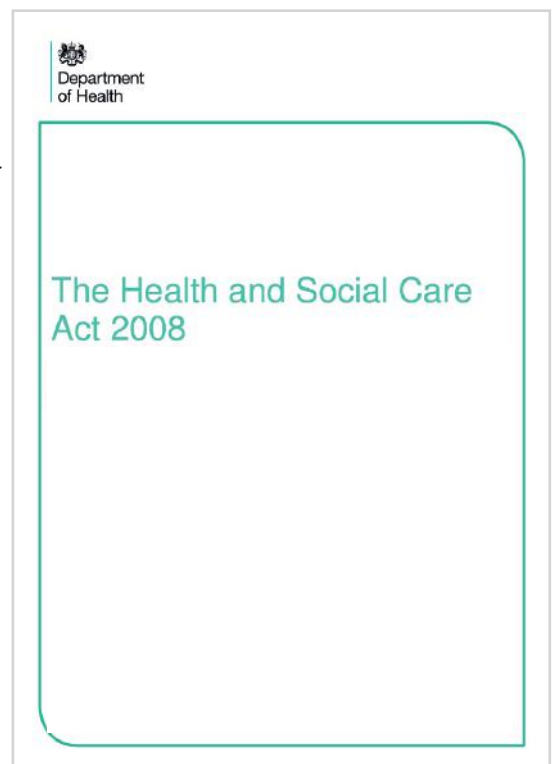
Zero tolerance is a high standard, necessary in the circumstances safeguarding covers.

Abuse and poor practice are closely linked, and poor practice may become abuse.

One-off incidents of poor practice differ from abuse in that they may be unintentional, do not cause any lasting harm and most short-term harm can be quickly put right (source - Ann Craft Trust)

If it is not abuse, unlawful discrimination or restraint, it is not a safeguarding issue, and referrals are not necessary by law. They might be necessary under the agreements and policies you have in place with the local authority / health authority, but in that case they are a referral about performance standards, not a safeguarding referral.

Extreme care is needed in separating abuse from poor practice. Zero tolerance does not mean poor practice





leads to dismissal. Nor does it mean safeguarding issues should all result in dismissal. Look back at the law, it depends on the circumstances.

Safeguarding issues trigger the duty to investigate and refer, but it cannot be assumed that dismissal is the appropriate outcome in all safeguarding issues, nor that action will be taken if referred. In theory it's possible that dismissal will not be the appropriate outcome if the incident is minor enough or the mitigating circumstances weighty enough. In most cases, though, dismissal will be a serious possibility in a safeguarding matter so long as it really is a safeguarding issue.

Where it is a safeguarding issue, the duty of referral to the Independent Safeguarding Authority is likely to be triggered and, possibly, referral to the police. More on this later.

So what are safeguarding issues?

In order to be a safeguarding issue, triggering the statutory duty to refer, it needs to be an issue equivalent to intentional harm. Examples are:

- > physical abuse: including hitting, slapping, pushing, kicking, inappropriate use of medication, restraint or inappropriate use of sanctions.
- > sexual abuse: including rape, and sexual assault or sexual acts to which the person has not consented, or could not consent, or where consent was obtained under duress.
- > psychological abuse: including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, intimidation, coercion, harassment, verbal abuse, isolation or removal from services or support networks.
- > financial/material abuse: including theft, fraud, exploitation, pressure in connection with wills, property or inheritance, or financial transactions, or the misuse or misappropriation of property, possessions or benefits.
- > neglect and acts of omission: including ignoring medical or physical care needs, failure to provide access to appropriate health or social care, educational services, the withholding of the necessities of life; such as adequate nutrition and heating.
- > discriminatory abuse: including racist, sexist, that based upon a person's disability, or any form of harassment, slurs, or similar treatment.
- > situational abuse can arise when pressures have built up and/or because of difficult or challenging behaviour.

> institutional abuse can feature poor care standards, lack of positive responses to complex needs, rigid regimens and routines, inadequate staffing and an insufficient knowledge base within the service.

These are high watermarks, and implicitly involve intent. It would be remarkable to accidentally and unintentionally harm someone. If the case involves an accident and lacks any intent to harm, it's probably not a safeguarding issue. It may be a negligence issue, or poor performance, but it's important to distinguish those from safeguarding in order that you are correctly implementing referrals where necessary and follow the correct policy and procedure in resolving the issues.

Is it just poor performance?

Unintended mistakes and more minor one-off issues are an indicator that there is no abusive intent.

Take great care in cases where an arguably minor issue is being described in the language of abuse, particularly in more discretionary or subjective areas.

References to your own policies or process standards, or codes of conduct, are usually performance issues. Don't confuse abuse with other duties, e.g. duty of candour.

Clearly separate poor performance, misconduct and safeguarding issues.

Broadly there are three categories of issue:

- > A safeguarding issue, usually involving intentional harm
- > An issue of poor performance; the employee was trying to do the correct thing but got it wrong unintentionally, and needs training or guidance to improve their standards
- > Misconduct which does not amount to safeguarding and is not poor performance, usually involving someone who knew what to do and had the capacity to do it correctly, but chose not to.

For additional guidance, see the Co-operatives UK guides:

https://www.youtube.com/playlist?list=PLmE_InV17WnUy3Su9ML16kUkzQXghiMOU



To allege that poor performance amounts to abuse really takes considerable repetition, sufficient to show intent. Again this is a high watermark. Abuse is obviously misconduct and therefore the disciplinary policy and process is the one to follow.

Poor performance might be conduct or capability – and there are different legal processes to consider in either case. But they are unlikely to be safeguarding issues.

Confidentiality is always important in potential safeguarding issues

If an employee tells you something 'off the record', then once you have been told you will probably need to investigate anyway. If you fail to do so, you may breach your legal duty of care and your referral duties, both statutory and from the agreement you have with other authorities.

You might be able to keep a source of information confidential, but only where it is necessary to do so.

However, what the victim or service user wants to happen is a valid thing to take into account – make a careful record of their wishes. If they don't wish there to be any action taken, you may need to refer that wish to the panel in order to make a decision with the stakeholders to override their wishes if the panel feel the issue is sufficiently serious that action must be taken. If the issue triggers the statutory duty to refer, the victim's / service user's wishes are not likely to be relevant. Once triggered, you must refer.

Make sure the source is told that they will be supported and protected if they make a formal complaint.

In investigating a potential safeguarding issue you will produce very sensitive personal information, which should be shared on a need-to-know basis only, and kept secure in accordance with data protection obligations.

Should I suspend pending an investigation?

Suspension is used where there is risk to the investigation or the workplace in the employee remaining on site. It is a good idea to confirm to the employee that suspension is not an indication of guilt or future decisions. Suspension should always be paid and be reasonable in length.

A potential safeguarding issue will usually warrant suspension. However, an initial review is necessary to determine what the issue is likely to be. Generally speaking, an issue relating to unintentional poor performance is unlikely to warrant suspension, whereas intentional breaches of standards of performance might warrant suspension if the outcome from the allegations, if proven, may be dismissal.

Ensure that the allegation is spelt out clearly so an assessment can be made as to the type of issue you are handling.

Investigations

An important first consideration will be whether or not the matter is sufficiently serious a safeguarding issue to require

> **The ACAS Code of Practice on Disciplinary and Grievances Procedures states:** In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

referral to the police. If you think it may be, it should be referred early on to the panel, and thereby to the police. It may be that the employer halts any internal investigation if the police wish to investigate whether or not a crime has been committed. In this case you would simply assist the police fully in their enquiries but should act on their instructions.

If the case is not one which will be investigated by the police, then the employer will undertake the investigation.

A safeguarding issue could, if proven, have serious consequences on the employee's future career. This means that the investigation must be thorough (*Salford Royal NHS Foundation Trust v Roldan* [2010] IRLR 721).

Case law tells us that we must focus as much on evidence pointing to innocence as evidence pointing to guilt (*A v B. EAT*, [2003] IRLR 405).

Ensure that the person investigating the issue is independent from the issue, i.e. that they were not involved and are not needed to provide their own information to the investigation.

In investigating a safeguarding issue, make sure everything is recorded and all relevant information in the form of documents and CCTV evidence captured and held together. Developing a pack of information which is a single point of reference for any potential disciplinary hearing is important.

Try to ensure that wherever possible a consistent manner of investigation is adopted. Interviewing some people but letting others write their own statement means there is an inconsistency in the way the information was sought; this may cause problems.

We recommend avoiding 'investigation reports'; where the investigating officer summarises the information developed and, in some cases we have seen in the past, offers opinion on what has happened and whether or not there should be a disciplinary hearing. It is better to simply record the output of the investigation, the results of interviews etc., as it is and as a whole.

The decision upon whether or not to refer the matter to a disciplinary hearing should not be taken by the investigating officer.

At the point the employer is considering whether or not to proceed to a disciplinary hearing, you may need to reconsider with the panel that the matter is being handled in the appropriate way in the light of the circumstances arising from the investigation. If, for example, you began investigating an issue of poor standards of care but the product of the investigation highlights a safeguarding issue, then the issue of referral should be reconsidered at this stage.

Take care in preparing an invitation to a disciplinary hearing

The invitation to the disciplinary hearing should be a very clear statement of the issue for which the employee is being called to a disciplinary hearing.

There must be, as explained above:

- > A clear separation of poor performance versus abuse
- > Be ready to distinguish the type of poor performance – conduct v. capability

There is no need to expressly put the allegation alongside a provision in your policy or performance standards, it is sufficient to say abuse and poor performance in their own right without reference to your policies. Where the issue is clearly covered by your policy or processes then you might refer to them, but don't try to shoehorn a conduct or performance issue as a perfect fit alongside a policy provision. If the misconduct or poor performance is obvious, there is no need for it also to have been covered by your policy.

References to your policies in the invitation to a disciplinary hearing may help where there is a particular standard you require of employees which would not otherwise be obvious to them. In this case, there will be questions to consider as to whether or not the standards had previously been clearly communicated to the employee. It would be unhelpful to refer to particular standards if they have not been communicated clearly to the employee.

It is so important to get the invitation right. It is very prejudicial to a fair disciplinary process to invite someone to a hearing to consider one matter, then discipline them for a slightly or wholly different matter, even if that is a reasonable conclusion based on where the process has led. If you wish to change the reason for the disciplinary hearing, then you may need to conclude the present disciplinary and issue a fresh invitation to another hearing in order that the employee can see and prepare to answer the new allegation which will be considered.

Be sure you have sent with the invitation to any disciplinary hearing a full pack of the output from the investigation process. Everything that will be considered at the hearing should be sent in advance. Employees should be advised that they have the right to be accompanied at the hearing by an employee colleague or trade union representative.

As in all disciplinary matters, send the invitation well in advance and consider what advance notice is necessary in order that the employee can digest the output from the investigation, take advice where they wish to, and arrange to be accompanied by their chosen companion.

Finally, as in all employment matters, it is important to stress what the consequences of the hearing could potentially be, e.g. whether or not you will be dismissed. This is essential so that the employee knows how serious the issue is and the potential outcome of the hearing.

It also helps to set out what will happen if the employee does not attend, e.g. a determination may be made in your absence.

> **The ACAS Code of Practice on Disciplinary and Grievances Procedures states:** If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

Representation



In **R (on the application of G) v Governors of X School and Y City Council [2011] IRLR 756 SC**, the Supreme Court held that the employer's refusal to allow the employee to be accompanied by a lawyer at a disciplinary hearing was not a breach of human rights article 6 (the right to a fair trial) because the school's disciplinary proceedings did not directly determine or exert a substantial influence over the Independent Safeguarding Authority's proceedings.

Therefore follow your ordinary disciplinary rules. These usually state that an employee may be accompanied by a fellow employee or a trade union official, indeed that is the minimum legal requirement anyway. But do check if there are additional permitted companions under your organisation's disciplinary process.

Generally there is no need to give any special treatment, by allowing a companion who is not another employee or trade union representative, other than in an incapacity case (minors, mental capacity).

The request to be accompanied must be 'reasonable' but an employer can't object to the identity of the companion. Therefore there is nothing which allows an employer to interfere with the employee's choice of companion, even if they were involved with the issue, or are from a trade union which is not recognised at your organisation.

An individual cannot be compelled to be a companion, so if the chosen companion refuses to support the employee, then they will need to find someone else.

An employee colleague companion must be given reasonable paid leave to support the employee at the hearing. A companion may address the hearing but where the disciplining manager asks a question the employee should answer. The companion should not answer questions for the employee.

How should I conduct the hearing?

1. Explain
2. Listen
3. Consider
4. Decide

Start with the allegation, ensure that the employee has received the invitation to the hearing, the supporting evidence, and has had time to consider the information and is ready to proceed.

From then on stick to the allegation. There are no points scored for good mooting or debating, just time wasted. If you feel the answer given is implausible, then that could be your outcome on that point. Employees rarely concede that something they are putting forward is incredible or implausible, but in some cases managers feel that is a point for argument in the hearing. Avoid this, make sure the employee has understood the question or point and record their answer, however unlikely you feel it is.

Separate anything that can and should be separated, e.g. in a misconduct hearing completely separate assertions made by the employee about the performance of others which are not relevant to the issues. These can be looked at separately.

Ensure you take time out; you are unlikely to be able to determine a very serious allegation during a short adjournment. Allow the employee breaks in the hearing where they need a break.

Consider reserving the decision and telling the employee you will reflect on the hearing and the evidence and confirm the outcome in writing.

Disciplinary outcomes

Ensure you set out your conclusions fully and clearly.

You can always seek advice on your outcome, and Co-operatives UK can support you by reviewing the evidence and guiding you on your draft outcome. An independent review can sometimes add a useful contribution to your outcome.

It helps to have a structure to your outcome letter, for example:

- > Recite the allegations from the invitation to the disciplinary hearing. This will help you to make sure that your letter sticks to the issues.
- > Summarise the points gathered from the investigation which are most relevant to the issues.
- > List out the points that were made by the employee at the disciplinary hearing.
- > Draw clear conclusions based on the allegation and the evidence you have including the explanations offered by the employee.
- > Take into account the employee's history in determining what sanction is appropriate, such as their employment record and length of service.

Overstated conclusions, over emphasis and self-justification, all indicate bias and prejudice. Rather than offering your opinion on the matter, you should set out what you have concluded and why. The standard of proof which your conclusions should work to are on a balance of probabilities; this means draw conclusions on what you think is more likely than not to have happened.

Set out in your conclusions that there is a right to appeal against the dismissal or warning, how much time the employee has to raise an appeal, and the process they should follow to raise an appeal.

Confirm whether or not, as a result of the outcome, any referral will be made to the Independent Safeguarding Authority.



For additional guidance, see the Co-operatives UK guides:
https://www.youtube.com/playlist?list=PLmE_InV17WnUy3Su9ML16kUkzQXghiMOU

The ACAS Code of Practice on Disciplinary and Grievances Procedures states:

Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.

That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- > Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- > Employers and employees should act consistently.
- > Employers should carry out any necessary investigations, to establish the facts of the case.
- > Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- > Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.
- > Employers should allow an employee to appeal against any formal decision made.

Employment tribunals are required to take the ACAS Code of Practice into account when considering relevant cases. If the Employment Tribunal feels that an employer has unreasonably failed to follow the guidance set out in the Code they have the power to increase any award they have made by up to 25%.

Referrals to other authorities

At any time it is alleged a criminal offence has been committed or may have been committed you should discuss the issue with the police, either directly or through the panel. If it is potential abuse or harm, then engage with them. Ensure you know who will take the lead in the investigation.

In relation to the local authority and health authority, you will need to consider their requirements for referral under your contractual arrangements with them, whether this is early or at conclusion of your internal process.

In relation to the Care Quality Commission, they should be notified when an abuse allegation is made and there is a duty to update them if a matter ceases to be or becomes an abuse matter.

The duty to refer matters to the Independent Safeguarding Authority comes at the conclusion of your disciplinary hearing. Employers working in regulated activity must refer someone to ISA's Disclosure and Barring Service if they:

- > dismissed an employee because they harmed someone [leavers]
- > dismissed an employee or removed them from working in regulated activity because they might have harmed someone [leavers and movers]
- > were planning to dismiss an employee for either of these reasons, but they resigned first [resigners]

Specific notes on the Independent Safeguarding Authority

The ISA is interested only in those cases where the duty to refer harm has been triggered, not the other kinds of poor performance or misconduct issues we have categorised earlier.

Examples of harm (source ISA)

Type of harm to vulnerable adult	Meaning	Example
Emotional / Psychological	Action or inaction by others that causes mental anguish	Inflexible regimes and lack of choice. Mocking, coercing, denying privacy, threatening behaviour, bullying, intimidation, harassment, deliberate isolation, deprivation.
Financial	Usually associated with the misuse of money, valuables or property	Unauthorised withdrawals from vulnerable adult's account, theft, fraud, exploitation, pressure in connection with wills or inheritance.

Physical	Any physical contact that results in discomfort, pain or injury	Hitting, slapping, pushing, shaking, bruising, failing to treat sores or wounds, under or overuse of medication, un-prescribed or inappropriate medication, use of restraint or inappropriate restraint, inappropriate sanctions.
Sexual	Coercion or force to take part in sexual acts	Inappropriate touching. Causing bruising or injury to the anal, genital or abdominal area, forcing an individual to watch sexual acts. Transmission of STD.
Neglect	Failure to identify and/or meet care needs	Untreated weight loss, failing to administer reasonable care resulting in pressure sores or uncharacteristic problems with continence. Poor hygiene, soiled clothes not changed, insufficient food or drink, ignoring resident's requests, unmet social or care needs.
Verbal	Any remark or comment by others that causes distress	Demeaning, disrespectful, humiliating, racist, sexist or sarcastic comments. Excessive or unwanted familiarity, shouting, swearing, name-calling.

These are a high watermark; they are very serious issues. Consider carefully whether or not the matter you are considering is serious enough to warrant a referral.

Note there is a 'harm test', and a person satisfies the harm test if they may harm a child or vulnerable adult or put them at risk of harm. It is something a person may do to cause harm or pose a risk of harm to a child or vulnerable adult.

Don't leave it to someone else to make the referral, even where you know of another referral by another authority. You cannot delegate your duty of referral and it does not matter if the same issue is referred both by you and by someone else.

Note that the ISA's Disclosure and Barring Service has review and appeal rights; the ISA may take a different view of whether or not a referral needs to be recorded against an individual.

Be conscious of the possibility of referrals, dismissals, etc. being followed by a decision by the DBS that the person should not be placed on the barred list. In litigation this can weaken your defence to any claim of unfair dismissal.

A policy-based approach

Your policy should be a clear point of reference for good practice.

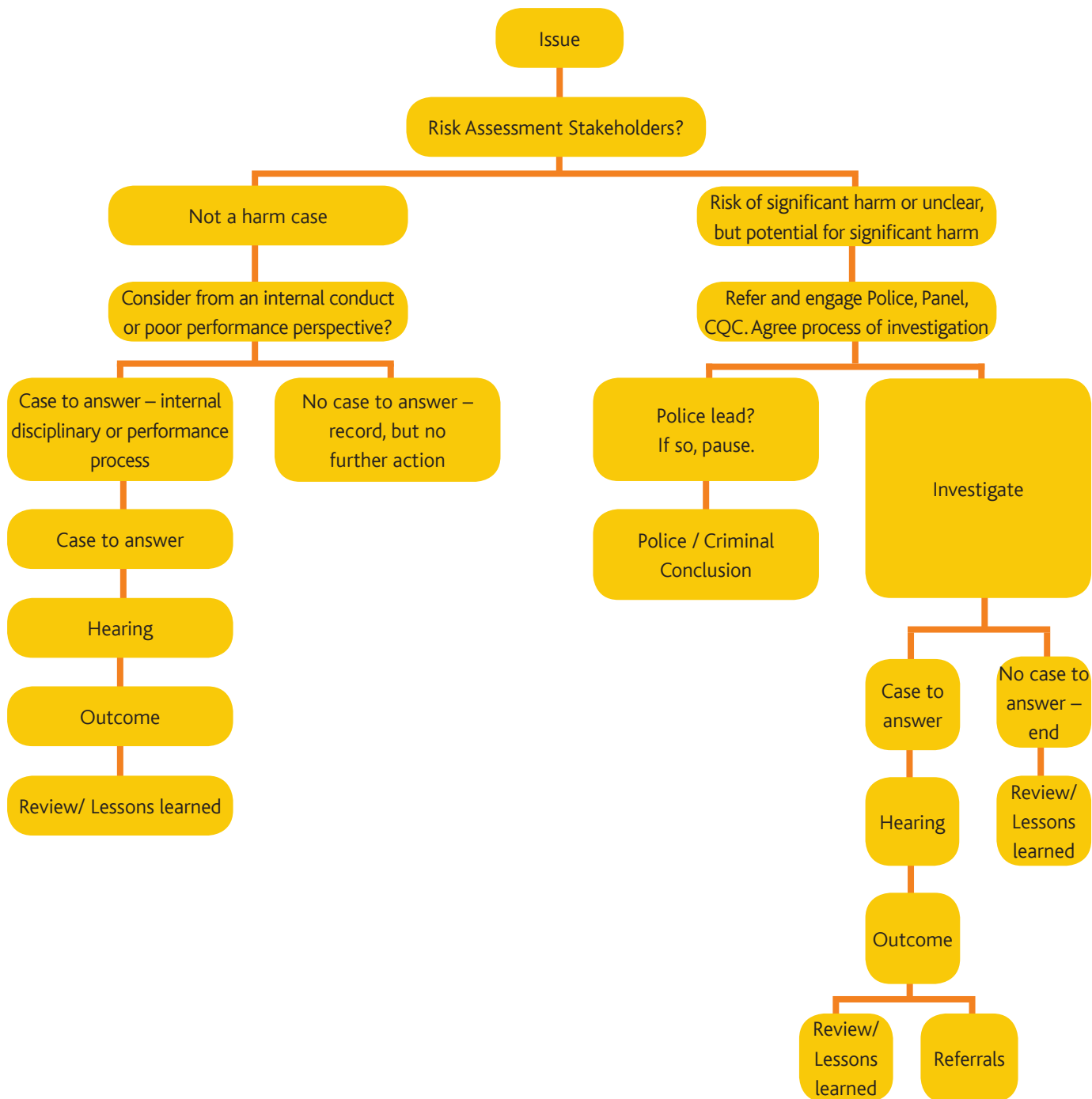
It is important that particular standards of performance in employment are clearly communicated to employees, especially where they are standards that may not otherwise be known to the public or a new employee because they are quite specific to the care sector.

An employer that acts inconsistently with its own policies or processes may well be found to have acted unfairly. This means that in some cases it is not the employee that requires a disciplinary sanction, but instead it may be found that your policies and procedures are inadequate and require review.

Always ensure that your policies and procedures have been communicated to all employees and that you have a record of having communicated them.

Consider structured decision making flowcharts and checklists to support your policies. An example of a flowchart is produced in Appendix 1 to this guide.

Appendix 1 - Flowchart



Appendix 2 – Case studies



Case Study 1

Mrs Jones is an elderly service user within a residential care home. She has prescribed medication which is administered by the residential home on a daily basis.

Whilst administering Mrs Jones' medication a carer, who is suitably trained and competent in administering medicines inadvertently administers too little of the prescribed medication. The carer follows the procedure for recording the error and immediately makes a supervisor aware.

Whilst the service user suffers no serious harm the care home has clear procedures for staff detailing how medication should be administered which the carer failed to follow.

The care home manager carries out an investigation and invites the carer to a disciplinary hearing. The carer answers the allegations by stating that the home was understaffed at the time of the incident (as a colleague attended work late on that date) and she was distracted by an incident with another service user.

The manager decides that although the carer has provided some mitigation the carer should be issued with a disciplinary sanction. However, since there was no intent to cause harm and the error didn't expose Mrs Jones to unacceptable risk of harm, the manager decides that the incident does not warrant a referral to the Independent Safeguarding Authority / Disclosure and Barring Service or the police.



Case Study 2

Mrs Smith, who is elderly and has physical care needs is in a residential care home. On one occasion after visiting Mrs Smith her husband, Mr Smith, tells the care home manager that he was about to enter Mrs Smith's room when he says he heard a carer raising her voice at Mrs Smith.

The manager of the residential home speaks to Mrs Smith immediately and discusses Mr Smith's concerns. Mrs Smith says she recalls the incident but says her husband has exaggerated events. There are no signs of any physical abuse and Mrs Smith is not distressed. She says she doesn't want the matter to be taken any further.

The manager interviews the carer involved who admits that she may have been a little short with Mrs Smith but explains that she had some mitigating personal circumstances which have now been resolved.

The manager decides that no disciplinary action is necessary and that the matter need not be referred as a safeguarding concern. However, since the care home has an obligation to the Local Authority, she makes the Local Authority aware of the incident and assures them she will monitor the situation and consider what lessons can be learned and whether further training is necessary. She also confirms that if a similar incident or something more serious occurs she will make them aware.



Case Study 3

A senior care assistant in a residential home attends to a service user with both learning and physical care needs. A more junior care assistant helps in assisting the service user getting up from bed. The service user is reluctant to get up. The senior care assistant becomes annoyed with the service user and shouts at him to get up. They manage to help the service user to sit up in bed but as they are trying to get him out of bed he decides he doesn't wish to, and attempts to lie down again. At that point the senior care assistant becomes angry and pushes the service user hard and tells him to get up. The service user is upset and starts to cry.

The junior care assistant reports the incident to a supervisor who suspends the senior care assistant and invites him to an investigation hearing. The senior care assistant attends the investigation hearing but denies pushing the service user. The supervisor speaks to the service user but he is unable to provide any clear evidence about the incident.

The supervisor is concerned and invites the senior care assistant to a disciplinary hearing. Upon receiving the invitation the senior care assistant resigns providing one week's notice to terminate his employment and also submits a medical certificate saying he is too unwell to attend either work or the disciplinary hearing during his notice period and employment terminates before any disciplinary action can be taken.

Even though it wasn't possible to progress the disciplinary procedure the supervisor reports the incident as a safeguarding issue to the Independent Safeguarding Authority / Disclosure and Barring Service and the police.

Appendix 3 – Model safeguarding adults policy and procedure

1.0 Introduction

(Name of organisation) is committed to creating and maintaining a safe and positive environment and accepts our responsibility to safeguard the welfare of all adults within our care. This policy explains our position on safeguarding adults, and sets out what you should do if you have any concerns about the safety or welfare of anyone within our care. Please read this policy carefully and ask your manager if you have any questions.

2.0 Our policy

(Name of organisation) has a zero tolerance approach to abuse, unlawful discrimination and restraint. This includes, but is not limited to, physical abuse, sexual abuse, psychological abuse, financial or material abuse, neglect and acts of omission, and discriminatory abuse. We believe that all adults, regardless of age, ability or disability, gender, race, religion, ethnic origin, sexual orientation, marital or gender status have the right to be protected from abuse and poor practice. We will always respect the rights, dignity and worth of all adults within our care. Additionally, we recognise that ability and disability can change over time, so that some adults may become additionally vulnerable to abuse, for example where they have increased dependency on others or increasing communication difficulties.

If we believe that any adult within our care has been subjected to treatment that we believe constitutes, or may constitute abuse, discrimination, or neglect, we will investigate this under our disciplinary procedures. Any employee, contractor or other individual working for us or within our organisation found to be subjecting an adult in our care to such treatment will be investigated and potentially dismissed. In certain circumstances, and certainly where we conclude that abuse of the above sort has occurred, we will refer the matter to other appropriate authorities, including, as appropriate, the police, the Care Quality Commission and the Independent Safeguarding Authority's Disclosure and Barring Service.

If you are concerned that any adult within our care has been harmed, or is at risk of being harmed, you must report this to your manager immediately. If for any reason you feel unable to report this to your manager, please report it to a more senior manager or to the Lead Safeguarding Officer / Safeguarding Adults Board. You won't ever be treated less favourably for raising a concern in good faith, but if we believe that you have made an allegation about a colleague maliciously, we will investigate this using the disciplinary procedure.

2.1 The principles of safeguarding

All interactions with adults within our care should be based on the following principles of safeguarding:

- > **Empowerment** - People being supported and encouraged to make their own decisions.
- > **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.
- > **Accountability** – Accountability and transparency in delivering safeguarding.

2.2 Signs and indicators of abuse and neglect

There are many signs and indicators that may suggest someone is being abused or neglected, these include but are not limited to:

- > Unexplained bruises or injuries – or lack of medical attention when an injury is present.
- > Person has belongings or money going missing.
- > Someone losing or gaining weight / an unkempt appearance.
- > A change in the behaviour or confidence of a person.
- > They may self-harm.
- > They may have a fear of a particular group or individual.
- > They may tell you / another person they are being abused – i.e. a disclosure.
- > You may witness abuse or harm, for example unnecessary restraint or use of force.

3.0 The procedure to follow

If you believe that an adult within our care is being, or is at risk of being abused, you must report this immediately to your manager, another senior manager, or to the Lead Safeguarding Officer / Safeguarding Adults Board. If you are concerned that someone is in immediate danger, please contact the police straight away.

3.1 How to Record a Disclosure

If an adult within our care, a relative, another member of staff or a member of the public comes to you with concerns about safeguarding, please follow the steps below to make sure that the issue is recorded carefully and dealt with appropriately:

- > Make a record of what has been said, using the person's own words as far as possible.
- > Explain to the individual that now that you have been made aware of the issue, it is your duty to report it to the Lead Safeguarding officer/Safeguarding Adults Board/a senior manager.
- > Complete an Incident Form and submit this to the Lead Safeguarding Officer/Safeguarding Adults Board/a senior manager. In the form describe the circumstances as fully as possible. Take care to distinguish between facts, observations, allegations and opinions; it is important that the information is accurate.
- > Be mindful of the need to keep this information confidential as far as possible. The information should only be shared with the Lead Safeguarding Officer/Safeguarding Adults Board/senior manager.
- > If the matter is urgent and relates to the immediate safety of an adult at risk then contact the police immediately.

3.2 How we will act if we are made aware of a safeguarding issue

If we are made aware of a safeguarding issue, or a potential safeguarding issue, we will fully investigate the circumstances and where appropriate will invite the alleged perpetrator to a disciplinary meeting, the outcome of which may include dismissal. As an organisation working with vulnerable adults we are also under an obligation to make referrals to appropriate authorities where we believe that a safeguarding issue has occurred:

- > If at any point before, during or after our investigation we believe that a criminal offence has or may have been committed we will refer this to the police at the earliest opportunity;
- > Where an allegation of abuse has been made, we will refer this to the Care Quality Commission;
- > We will refer all potential malpractice or safeguarding issues to the local authority/health authority as per our contractual arrangements;
- > We will refer to the Independent Safeguarding Authority's Disclosure and Barring Service following the conclusion of our internal process if we:

- i) dismissed an employee because they harmed someone [leavers]
- ii) dismissed an employee or removed them from working in regulated activity because they might have harmed someone [leavers and movers]
- iii) were planning to dismiss an employee for either of these reasons, but they resigned first [resigners]