

Review of Section 16 [ SAFEGUARDING CHILDREN ALLEGATIONS AGAINST HEALTHCARE STAFF ]  
Buckinghamshire Healthcare Trust Safeguarding Policy  
by @MandateNow

The Trusts policy is on the left with @MandateNow comments on the right. Those which are background highlighted are a particular concern.

There is no law requiring alleged or even 'known' child abuse to be reported to the 'authorities.' With this the foundation of child protection for all 'Regulated Activities' [as defined in SAFEGUARDING VULNERABLE GROUPS ACT 2006] which including the NHS, we have reviewed sections 12 and 16 of the Buckinghamshire Healthcare Trust Safeguarding Policy to see if, in the absence of law requiring suspected or know abuses to be referred, whether the Trust has created a reliable and supportive referral protocol.

#### Comments

- The policy adheres to the very limited demands of statutory guidance despite the Trust being at liberty to exceed the low thresholds.
- 'Discretionary Reporting' means a member of staff who reports either a concern or 'known' abuse is a whistle blower by default because there is no law requiring a report to be made. Courageous staff who do report are making a value judgement. They are not complying with law which, if it existed, demands they report and which would also protect the reporter for doing the right thing. There is legislative precedent for reporting suspicion contained in the PROCEEDS OF CRIME ACT 2002 which very successfully addresses 'money laundering' and is available here: <http://www.legislation.gov.uk/ukpga/2002/29/section/330> An example of how this works in practice for staff and staff and professional services including lawyers who are involved in financial services is in this document <http://www.thesurvivorstrust.org/documents/poca-mr-markup.pdf> (forgive the quality) which is an example of an extract from a staff manual for a company operating in the sector. It is precisely what is needed for safeguarding in Regulated Activities.
- MandateNow wrote to Kate Lampard 21.01.13 to draw this to her attention that the minimum expectations in 'statutory guidance' can be exceeded by the trust if it wishes. In contrast to Bucks Healthcare Trust, the BBC has a far clearer policy, and has taken steps in the right direction

but further work is needed. Importantly its child protection policy <http://goo.gl/nlcTHI> defines ‘abuse’ in para 6.2., something that is sadly absent from the Bucks Trust policy.

- Section 16 does not contain the word ‘must’ anywhere in it. At 16.2 we are not informed of the ‘usual procedures ‘that should’ be followed when an allegation against a member of staff is made. What are they? The staff and public are left uninformed in this document and therefore the Trust cannot be held to account.

16. SAFEGUARDING CHILDREN ALLEGATIONS AGAINST HEALTHCARE STAFF	
It is important that all adults working with children understand that the nature of their work and the responsibilities related to it, place them in a position of trust. Where it is alleged that any staff member has:	
<ul style="list-style-type: none"> <li>• Behaved in a way that has harmed a child, or</li> </ul>	
<ul style="list-style-type: none"> <li>• May have harmed a child or</li> </ul>	
<ul style="list-style-type: none"> <li>• Possibly committed a criminal offence against or related to a child; or</li> </ul>	
<ul style="list-style-type: none"> <li>• Behaved towards a child or children in a way that indicates they may pose a risk of harm to children</li> </ul>	
It is important that a decision is made about whether the information <b>should</b> be treated as an <u>allegation</u> against a staff member or a <u>complaint</u> against a staff member. If in doubt it can be discussed with the Local Authority Designated Officer (LADO) who can be contacted via First Response.	'Should' indicates this is a discretionary suggestion.

<p>Procedures need to be applied with common sense and judgement. Some allegations will be so serious as to require immediate referral to children’s social care and the police for investigation. Others may be much less serious and at first sight might not seem to warrant consideration of a police investigation, or enquiries by children’s social care. However, it is important to ensure that even apparently less serious allegations are seen to be followed up, and that they are examined objectively by someone independent of the organisation concerned. Consequently, the LADO <b>should</b> be informed of all allegations that come to the employer’s attention and appear to meet the criteria above so that s/he can consult police and social care colleagues as appropriate. The LADO <b>should</b> also be informed of any allegations that are made directly to the police (which <b>should</b> be communicated via the police force designated officer) or to children’s social care.</p>	<p>"Procedures need to be applied with common sense and judgement." This is a hole that permits procedures not to be applied at all, because "common sense" might suggest that the member of staff couldn't possibly do such a thing.</p> <p><b>"The LADO should be informed" – first, it's only a "should" not a "must" so there is discretion to not inform the LADO. Secondly, passive voice is used – it doesn't say who should inform the LADO. Without it being clearly stated it sometimes won't get done.</b></p>
<p>There may be up to 3 strands in the consideration of an allegation:</p>	
<ul style="list-style-type: none"> <li>• A police investigation of a possible criminal offence;</li> </ul>	
<ul style="list-style-type: none"> <li>• Enquiries and assessment by children’s social care about whether a child is in need of protection or in need of services;</li> </ul>	
<ul style="list-style-type: none"> <li>• Consideration by an employer of disciplinary action in respect of the individual.</li> </ul>	
<p>16.2 Process</p>	
<p>The usual procedures to report concerns that a child has suffered harm or may be at risk of suffering harm <b>should</b> be followed. However if a staff member from the trust or any health agency commissioned by the CCG’s is implicated in the allegation then the following guidance <b>should</b> also be followed in conjunction with local policies.</p>	<p>What are "the usual procedures to report"? Isn't this document supposed to be describing them?</p> <p>The "following guidance should also be followed." Once more "should" offers discretion not to do it if you don't want to.</p>

<p>As soon as a health care organisation becomes aware of an allegation (or potential allegation), either directly or via another agency, it <b>should</b> be reported immediately to the Named Senior Officer within the organization and the Designated Senior Manager. They <b>should</b> immediately liaise with the Local Authority Designated Officer who can provide advice and support.</p>	<p>"it should be reported" and the use of passive voice again. It doesn't say who should report and does not require a report to be made.</p> <p>Who are the "Named Senior Officer" and the "Designated Senior Manager"? They are not named in the document although telephone numbers are in Appx1 which is not referred to in this procedure. "Named Senior Officer" is not a position used in Appx1. One also has the disturbing feature of telephone numbers for 'Named Nurses' who names are not then provided.</p> <p>"They should immediately liaise". There's "should" again. It seems that nobody is ever actually required to do anything.</p>
<p>Some allegations will clearly warrant a referral to Children's Social Care, others may be less serious but will still require follow up. If a strategy discussion is needed or it is clear that police or children's social care may need to be involved, then this <b>should</b> not be done until those agencies have been consulted, and agreement reached about what information can be disclosed to the staff member.</p>	<p><i>"Some allegations will clearly warrant a referral to Children's Social Care, others may be less serious but will still require follow up."</i> <b>The thresholds for distinguishing between these two types of cases are not stated. Given that referral to the LADO is discretionary, and no discussion with the LADO is mandated by the Trust, how can we be assured cases that have reached the appropriate threshold, whatever this is, <u>will</u> be reported to the LADO?</b></p> <p>"If a strategy discussion is needed" – we are left to speculate, as this part of the policy leaves us uninformed whose decision it is. This should be stated in the document as an informative piece of text.</p>
<p>If there is cause to suspect that a child is suffering or likely to suffer significant harm, a strategy discussion will be convened.</p>	<p>Convened by whom? Unless a specific person has the responsibility for doing so, then it won't necessarily happen.</p>

<p>If a formal strategy discussion is not considered appropriate because the threshold of significant harm is not reached, a police investigation might still be needed and discussion <b>should</b> still take place between the agencies about how to progress, including whether any disciplinary processes can take place in parallel with criminal processes, or whether disciplinary action needs to wait until police enquiries and/or prosecution are complete. If it becomes clear that investigations by the police and or social care are not necessary or the strategy discussion / initial evaluation decides this is the case, then the Designated Senior Manager will agree the next steps with the LADO.</p>	<p>There's a great deal of passive voice here. Everything supposedly gets done but who is required to do it? Once more we require informative text.</p>
<p>Point 38 to 42 of Appendix 5 of Working Together (2010) says —where the initial evaluation decides that the allegation does not involve a possible criminal offence it will be dealt with by the employer. In such cases, if the nature of the allegation does not require formal disciplinary action, appropriate action <b>should</b> be instituted within 2 working days. If a disciplinary hearing is required and can be held without further investigation, the hearing <b>should</b> be held within 15 working days.</p>	<p>Lots more "should". There is a "will" there which appears either to be a statement of an instruction.</p>
<p>Where further investigation is required to inform consideration of disciplinary action the employers <b>should</b> discuss who will undertake that with the LA Designated Officer. In some settings and circumstances it may be appropriate for the disciplinary investigation to be conducted by a person who is independent of the employer or the person's line manager to ensure objectivity. In any case the investigating officer <b>should</b> aim to provide a report to the employer within 10 working days.</p>	<p>More "should". And it is "the employers" who should and not a specific person. This is the danger of copying + pasting bits of "Working Together" guidance into the safeguarding procedures for individual organisations. "Working Together" provides a framework for what should go into a safeguarding procedure. This document is supposed to be <u>the procedure itself</u> with the Trust informing us clearly what its staff are expected to do.</p> <p>For instance Working Together speaks of "in some settings" but this procedure is interested one setting - Buckinghamshire Healthcare NHS Trust. The procedure for this organisation only should be described here.</p> <p>A procedure is a succession of statements in the following or similar format: "In circumstance A, Person B shall carry out Action C". This document contains almost none of this.</p>

<p>On receipt of the report of the disciplinary investigation, the employer <b>should</b> decide whether a disciplinary hearing is needed within 2 working days, and if a hearing is needed it <b>should</b> be held within 15 working days. (Information <b>should</b> be provided by police and children's social care as appropriate to assist with the process).</p>	<p>"the employer" – again, for a procedure a specific person or group of people to make this decision needs to be stated here.</p>
<p>In some cases further investigation will be needed to enable a decision about how to proceed. This investigation process <b>should</b> be agreed between the Local Authority Designated Officer and the Designated Nurse / Doctor.</p>	<p>If agreement isn't reached how do does the Trust proceed?</p>
<p>If a criminal investigation or prosecution is undertaken the police or the CPS <b>should</b> inform the employer and the LA once an investigation and/or trial is complete, or if the investigation is closed without charge, or if they have decided not to prosecute after charging. At this point a decision <b>should</b> be made as to whether further action is appropriate and how to proceed, and information may be provided by the police and children's social care to aid this decision. The options open to the employer will depend on the circumstances of the case, information from police and children's social care, and the different standards of proof required in disciplinary and criminal proceedings.</p>	<p>Who 'should' make the decision whether 'further action' is necessary?</p>
<p>Depending on the outcome of the investigation consideration <b>should</b> be given as to whether a referral to Disclosure and Barring Service. The content of this referral will be discussed with the Local Authority and agreement reached about who will take responsibility for this. In addition consideration <b>should</b> be given as to whether a referral to any professional body or regulator is required.</p>	<p>"consideration should be given" – we have "should" again. And also who gives that consideration?</p> <p><b>The responsibility for making a referral to DBS falls to the employer of the person being referred. The Chair of the Bucks NHS Trust, who has statutory responsibility for safeguarding in Trust settings, it will be him/her in the vast majority of cases.</b></p>
<p>If the allegation is found to be unfounded but it is determined that it was deliberately invented or malicious, the police <b>should</b> be asked to consider whether any action against the person responsible for making the allegation might be appropriate.</p>	<p>"the police should be asked" – discretionary again and who asks the police?</p>

<p>Any lessons to be learnt and the outcome of the case will be presented to the LSCB, Trust Risk Monitoring Group and any relevant committee within the staff member's employing organisation.</p>	<p>"will be presented to the LSCB" – by whom?</p>
<p>Ref: BSCB web-site procedures – <a href="http://www.bscb-lscb.org.uk">www.bscb-lscb.org.uk</a></p>	<p><b>Although this policy was uploaded on the 19/20 June there are three broken HTML links to important documentation.</b></p> <ol style="list-style-type: none"> <li>1. Paragraph 10.3.2. P17 of the policy and the link to Bucks Safeguarding Children's Board procedures for dealing with fabricated illness : <a href="http://www.bucks-lscb.org.uk/sites/default/files/Procedures/Fabricated_Illness_2013.pdf">http://www.bucks-lscb.org.uk/sites/default/files/Procedures/Fabricated_Illness_2013.pdf</a></li> <li>2. Paragraph 16.2 Ref: BSCB web-site procedures – <a href="http://www.bscb-lscb.org.uk">www.bscb-lscb.org.uk</a> – this is a broken link on the page but even if entered into an address bar manually it does not function.</li> <li>3. Paragraph 17.4.2 P47 The guidance, Complex child abuse investigations: Inter-agency Issues (2002) are available for further information and can be found at <a href="http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/fs/en">http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/fs/en</a></li> </ol> <p>All links in all policies should be in the control of the Regulated Activity because the reader currently has no access to specific elements of BSCB procedures to which the Trust is referring. Also, in the event of any difference between the BSCB procedures and this document, which takes precedence? It is not stated.</p>
<p>16.3 Suspension</p>	

<p>The possible risk of harm to children posed by the accused person needs to be effectively evaluated and managed. Staff <b>should</b> not be suspended automatically but a decision made which takes into consideration the individual circumstances of the employee. A risk assessment <b>should</b> be made around their continued working arrangements in relation to suspension from duty, amended duties, changed work base, or chaperoned attendance. This decision has to be made by the employer, as neither the Local Authority nor the Police can require a member of staff to be suspended. This authority is vested in the employer alone, though their views <b>should</b> be taken into account. For the Trust the Chief Executive or delegate, will make this decision. In addition the views of the service/organisation manager, the designated professionals for child protection, Human Resources, and the outcome of any investigation or enquiries <b>should</b> be taken into consideration when making this decision.</p>	<p>This is the child protection procedure for the Buckinghamshire Healthcare NHS Trust which is quite a large organisation. Is it really "the Chief Executive or delegate" who will take these decisions in individual cases?</p> <p>Under what circumstances does the Chief Executive delegate the decision to somebody else? Is it on a case by case basis, or is somebody else given a more general delegated authority? If so, that person should be named in the procedure.</p>
<p>16.4 Confidentiality and information sharing</p>	
<p>Health agencies may be requested to provide information or records on the staff member concerned to assist with the investigation. These requests should be considered following the usual process, giving due consideration as to whether it is in the public interest to "all agencies concerned, including the employer, should share all relevant information they have about the person who is the subject of the allegation, and about the alleged victim".</p>	
<p>Every effort should be made to maintain confidentiality and guard against publicity. However, if the staff member is to be charged with a criminal offence their details may be released into the public domain. The Trust's Communications Department and the Communications Lead for the health organisation should be informed if this is the case, preferably in advance.</p>	



16.5 Support	
<p>If the staff member is a member of a Trade Union or professional association s/he should be advised to contact that body at the outset. The staff member should be keep informed of the progress of the case. This may require liaison with other involved agencies to ensure that only information which will not prejudice any investigation is shared with them. Support may be offered via Workplace Health and other employee welfare arrangements, i.e. ACAS, which the agency has in place. If the person has been suspended from duty they should be informed of developments in the workplace.</p>	
<p>If the person has been suspended from work and at conclusion of the case it is determined they can return to the workplace, consideration should be given as to how best to facilitate this. This may need to include consideration as to how to manage their contact with the child/ren that made the allegation, if appropriate.</p>	
16.6 Resignation and compromise agreements	
<p><b>Should</b> the staff member about whom an allegation has been made, resign at any point, the investigations into the allegation <b>should</b> continue to be followed up. Compromise agreements to prevent action are not acceptable.</p>	<p>More "should", more passive voice.</p>
16.7 Record keeping	

The Trust and the employing agency **should** ensure that clear and comprehensive records are maintained. This **should** include details of how the allegation was followed up and resolved, and details of any action taken and decisions reached. This **should** be stored in the individual's confidential personnel file and a copy given to the individual, and be retained (including for those who leave the organisation) until retirement age or for 10 years if that will be longer. This is to ensure that accurate information can be given in response to future requests for references, and will provide clarification in cases where future Disclosure Barring Checks (DBS) reveals an allegation not resulting in a prosecution or conviction, and **should** be kept to prevent unnecessary re-investigation if the allegation resurfaces

More "should". Also, who within "The Trust and the employing agency" is supposed to do this?

There is no mention in this, or any other part, of the policy for the need of the Trust to return of Statutory Referrals to the Disclosure and Barring Service in appropriate circumstances. This is extremely important. Why is it not in the policy?

Something along the following line should be engrossed into the policy:

*'If the Bucks NHS Healthcare Trust removes an employee from working with children (or would have, had the person not left first) because the person is believed to pose a risk of harm to children, the Bucks NHS Healthcare Trust must make a referral to the Disclosure and Barring Service'.*

03.02.15