

Safeguarding Children and Vulnerable Adults

Policy and Procedure



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Author: AD People & Culture

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Responsible Officer: AD People & Culture
Author: AD People & Culture

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Two Rivers Housing

Safeguarding Children and Vulnerable Adults Policy

1. POLICY INTRODUCTION

Two Rivers Housing Group (TRH) is committed to safeguarding the welfare of vulnerable adults and children using its services and where our staff come into contact with children, young people or vulnerable adults. TRH Group is also committed to working in partnership to protect children and vulnerable adults from abuse. This policy outlines the process of identifying and responding to abuse, with the aim of preventing abuse by encouraging staff awareness, and providing clear guidelines and procedures.

1.2. Two Rivers Housing Group recognises the importance of a shared commitment to safeguarding vulnerable adults from abuse and exploitation, working in partnership with other agencies, based on the following:

- That abuse is prevented, identified and investigated, whether it be alleged, confirmed or suspected.
- There is respect for the autonomy, diversity and confidentiality of adults who are being abused.
- A recognition that managers have a key role to foster an open and supportive culture, determine standards of practice and ensure that staff and volunteers are aware of policies and procedures.

1.3. To help develop good practice in safeguarding children and vulnerable adults, TRH Group managers and staff will :

- Review safeguarding cases and share any lessons
- Review and update organisational policies and procedures to reflect changes in legislation and any national policy guidance
- Identify and make recommendations for staff training

1.4. The interests and wishes of the child, parent(s) and vulnerable adult should be central to the use of the Safeguarding Policy and employees should involve the child, parent(s) or vulnerable adult throughout the operation of the Policy and Procedures. Information should be given about the options available that could protect them from abuse. However an individual's wishes cannot undermine or over-ride TRH Group's responsibility to act under this policy.

1.5. In circumstances where the child or vulnerable adult does not have the mental capacity to make an informed choice, any decisions and actions will be taken by those conducting the investigation and planning their protection. This will be based on a judgment of what is in the best interest of the child or vulnerable adult, informed where appropriate by discussions with relatives, carers and other agencies. This is in line with the requirements of the Mental Capacity Act 2005.

1.6 Services will be provided in a manner which does not discriminate on grounds of racial or ethnic origin, religion or belief, disability, gender, age or sexual orientation. The specific cultural or other needs of the child or vulnerable adult will be provided for, such as through an interpreter, communication aid or other facility.

1.7. TRH Group will make information available to customers and carers that explains what abuse is, how and to whom to express concerns, and how to make a complaint.

1.8. TRH Group will assist a vulnerable adult or parents/relatives to access an independent advocate and obtain legal advice, where appropriate.

1.9. For the purposes of this Policy and Procedure, unless otherwise specified, the term 'customer' refers to all people using the services of Two Rivers Housing Group (TRH). The terms 'the Organisation' refers to TRH. The term 'staff' refers to all Two Rivers Housing Group's employed staff, agency staff, contractors and volunteers. The term 'service', 'project' or 'scheme' refers to all TRH services.

1.10 The guidelines and procedures that follow cover these areas:

Sections 2 and 3 - Definition and types of abuse

Section 4 - Who abuses

Section 5 - Criminal Abuse

Section 6 - Preventing abuse

- setting standards
- recognising signs
- professional boundaries

Section 7 - Roles and responsibilities – managers, staff, volunteers

Section 8 – Dealing with evidence or allegations of abuse

Annexes attached to this policy are as follows:

Annex 1 – Whistle-blowing guidelines for staff

2. DEFINITION OF ABUSE

- 2.1 Abuse is defined as “a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to a vulnerable person”. Or “ the violation of an individuals human rights by any other person or persons “(No Secrets, Department of Health (March 2000)).
- 2.2 Children are vulnerable to various forms of abuse as a result of both their dependency and immaturity. The primary responsibility for the protection of children rests with parents. When parents do not, or cannot, fulfil this responsibility, social services, police and the NSPCC have a statutory duty to ensure that children are protected from harm. Parents and the statutory authorities cannot do this alone. Child protection is everyone's responsibility.
- 2.3 A vulnerable adult is a person aged 18 year or over “who is or may be in need of community care services (in any setting or context) by reason of mental or other disability, age or illness; and “who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation” (No Secrets)
- 2.4 Children are taken to be up to twelve years old and young people between thirteen and eighteen years.

3. TYPES OF ABUSE

- 3.1 Children can suffer abuse by a parent, a sibling, a relative, a carer, an acquaintance or a stranger. Abusers may be adults or other children. The abuse may be the result of a direct act, or a failure on the part of the carer to act or to provide proper care, or both.
- 3.2 The mistreatment of a vulnerable adult by a carer/service provider is more than an expression of anger or frustration; it is a more extreme type of behaviour, and is often found in relationships where customers are physically, mentally or emotionally dependent on carers/service providers. This type of relationship increases the possibility and risk of abuse occurring.
- 3.1. Different types of abuse can occur within these relationships. These are:
- 3.1.1. Physical Abuse The use of force which results in pain or injury or a change in the person's natural physical state, for example bruises, burns, pain or impairment. These injuries may have been sustained by actions such as hitting, pushing, forcing, restraining or burning a child or vulnerable adult.
- 3.1.2. Psychological Emotional Abuse

Behaviour that has a harmful effect on the vulnerable adult's or child's emotional health and development. A person may psychologically abuse a

child or vulnerable adult in a variety of ways. S/he may swear at, humiliate, ignore or frighten a child or vulnerable adult. The result of emotional abuse may be intimidation of the victim, mental distress, denial of basic human and civil rights, negation of choices, wishes and self-esteem.

3.1.3. Financial Material Abuse The use of a vulnerable adults's property, assets, income, funds or any resources without their informed consent or authorisation. A provider may misappropriate a vulnerable adults's monies. This could involve stealing, or the illegal use, or withholding of a benefit/pension book, bankbook or similar, or by physically taking cash or valuables without consent.

3.1.4. Sexual Abuse

A child or vulnerable adult is being sexually abused when s/he is forced or coerced by a carer, or other person, into taking part in sexual activities, or s/he is unable to give consent. Inappropriate sexual behaviour between a member of staff and a customer is always abusive and will lead to disciplinary proceedings and possible criminal charges.

3.1.5. Neglect

A carer/service provider may neglect a child or vulnerable adult who is in need of care by depriving them of essential elements of normal day-to-day living, e.g. food, personal care or medical care, including the failure to intervene in behaviour which is dangerous to the child or vulnerable adult or to others.

3.1.6. Discrimination

Exists when values, beliefs or cultural factors result in a misuse of power that denies opportunities to some groups or individuals. It is the exploitation of a person's vulnerability, resulting in repeated or pervasive negative/discriminatory treatment of an individual, which excludes them from opportunities in society, for example in education, health, justice, civil status, access to services and protection.

3.1.7. Institutional Abuse

The mistreatment of, or abuse of, a child or vulnerable adult by a regime, set of procedures or systems within an institution which systematically abuse children or adults

Institutional abuse can occur when the routines, systems and norms of an institution force individuals to sacrifice their chosen lifestyle, and /or cultural diversity to the needs of the institution

3.1.8. Causes Of Abuse In Support/Care Settings

Abuse in support/care settings can occur as a result of:

- The establishment/service being badly managed.

- Care/support staff being untrained, poorly supervised or having little, to no support from management.
- Lack of clear policy or practice guidelines.
- The care/support that carers/support providers provide can be difficult, exhausting and frustrating. The demands on the carer can build up to resentment and anger, and abuse may occur as a result of this.

3.2.9 Any or all of these categories of abuse may be perpetrated as a result of deliberate intent, acts of omission, negligence or ignorance.

4. WHO ABUSES?

Abuse exists when values, beliefs or culture result in a misuse of power that denies the human rights of some groups or individuals. Those who perpetrate abuse are often well known to person(s) being abused, and may be in a position of power or authority. An abuser may be:

- A paid carer/support provider or volunteer.
- A partner, relative, parent or friend.
- A health worker, social worker or other worker.
- A visitor or other contact.
- Another vulnerable adult.

5. CRIMINAL ABUSE

5.1 Many of the above categories of abuse are actions that may constitute criminal offences. Such actions may include, although are not limited to:

- Assault whether physical or psychological.
- Sexual assault or rape.
- Theft.
- Fraud or other forms of financial exploitation.
- Discrimination on grounds of race, gender or disability.
- False imprisonment.

5.2 The police should be contacted in all cases where abuse may constitute a crime, and any investigations conducted should be done so in consultation with the police.

5.3 The Youth Justice and Criminal Evidence Act 1999 introduces new provisions for the protection of vulnerable witnesses, which assists and encourages vulnerable or intimidated witnesses to give evidence in criminal cases.

6. PREVENTING ABUSE OF CHILDREN AND VULNERABLE ADULTS

6.1. TRH Group will actively work to prevent abuse within a framework of quality assurance, both in staff development and service delivery. The procedures aim to clarify the roles of management, staff and volunteers when they have a concern about the abuse of a child or vulnerable adult. It will address the following areas:

6.1.1. Setting standards/performance expectations

Through setting and publicising clear aims and objectives, a stated philosophy of support, core values and clear performance expectations.

6.1.2. Human Resource Management

Staff are recruited on the basis of relevant qualifications, experience and subject to satisfactory references. This will include DBS and other relevant background checks in line with legislation under the Safeguarding Vulnerable Groups Act 2006.

6.1.3. Accessible information

Accessible information for customers, carers and the general public should be made available on raising concerns and making complaints.

6.1.4. Good Practice

All staff should be clear about their roles and expectations relating to performance. They should undertake a comprehensive agreed induction programme which includes the Safeguarding Policy and Procedures, and ongoing training on these procedures and awareness raising.

All staff are subject to a six-month probationary period during which careful assessment of their ability and commitment to working with vulnerable people will take place.

All staff are to receive regular structured and recorded supervision and appraisal, as well as direct observation and monitoring of their work, particularly around case management and professional boundaries.

There should be good communication and an “open culture” in the organisation. Accurate factual records should be kept at all times particularly during times of concern. These should be recorded through customer case files, incident reports, complaints logs, supervision and other appropriate documentation.

Any staff failing to meet agreed standards will be managed with the organisation’s disciplinary procedures and may be ultimately suspended or dismissed from employment, have their probationary period extended, or confirmation in post suspended. The Code of Conduct should be followed at all times.

Training in Safeguarding Children and Vulnerable Adults is mandatory for all visiting staff, and safeguarding issues will also be included within training on support planning and risk assessment. Evidence of proactive work to protect customers and of responses to concerns, should be recorded on MIS.

6.1.5. Effective management/monitoring systems

The standard of support provided is ultimately the responsibility of the managers of the organisation or service.

Line managers should ensure staff are aware of reporting procedures and their responsibility to report/record/investigate concerns, should they arise.

TRH will promote an open management style which encourages both staff and customers to feel able to raise and report concerns in relation to poor practice and abuse.

There are guidelines on Whistle blowing to support this policy, see Annexe 1.

6.2. Recognising Signs of Abuse

Recognising signs of abuse can be difficult, and a child or vulnerable adult may not feel comfortable reporting abuse, or may not be aware that it is in fact abuse that is occurring. As service providers, the responsibility to protect customers from abuse is apparent and essential.

Vigilance around behaviour that may not normally be displayed by a customer is essential, and any concerns arising should be sensitively investigated. This includes a reluctance by a customer to engage with particular members of staff/another customer or person, or withdrawal from activity, or unexpected resentment or anger towards a member of staff. These types of response or behaviours should be investigated.

The potential for financial abuse is increased in a support environment, where relationships of trust are established between customers and staff. All staff should monitor these situations, and provide opportunities for customers to declare abuse where it is happening.

Where vulnerable customers are living in residential settings they may be more vulnerable to abuse from other customers, due to their proximity.

Where vulnerable adults live alone in the community, they are particularly vulnerable to exploitation where they are not in a sheltered housing environment, or have staff/carers on site to monitor.

Where a customer has a sudden shortage of money, or displays a reluctance to have their money/budgeting assisted by staff, this may be a warning sign that exploitation is occurring, although it could have other meanings. This should be investigated, while recognising that it is ultimately the customer's choice to accept assistance with the management of their money.

6.3. Professional Boundaries

Staff should ensure they maintain professional boundaries at all times, and have awareness of equality and diversity issues. Managers should ensure that staff's professional boundaries with customers are upheld and provide coaching and monitoring to staff through supervision. Managers and staff should ensure customers are aware of the appropriate code of conduct and professional relationships expected.

6.4. Following procedures and statutory authorities

Cases involving the suspected, or alleged abuse of children and vulnerable adults are complex, and involve difficult decisions. These procedures provide a framework which can provide a basis for sound practice and support professional judgements in working in this area. However, vigilance and staff/customer awareness are essential if we are to successfully safeguard children and vulnerable adults from abuse. Action taken under this Policy and Procedure does not affect the obligations placed on the organisation to comply with statutory responsibilities such as:

Notifying the Disclosure and Barring Service (DBS) under the Safeguarding Vulnerable Groups Act 2006

The duty to comply with Employment Legislation.

Contractual obligations under Supporting People.

7.0 ROLES AND RESPONSIBILITIES

7.1 All Staff

All staff have a responsibility to act on any allegation, and report a concern of abuse of a child or vulnerable adult immediately.

Managers will ensure that the situation is assessed and investigated immediately if a crime has been committed, by reporting it to the relevant authority, or initiate an investigation within 24 hours of the concern arising.

The Flowchart at Annex 2 sets out the stages to be followed, and the line manager/senior manager/People Team will advise/take appropriate action during the course of these processes.

Information suggesting that abuse has occurred could come from a number of sources:

- Directly from a child or vulnerable adult being abused.
- A concern arising from an observation
- From a relative, friend, other customer or another member of staff
- A member of the public raising a concern

Safeguarding children and vulnerable adults from abuse should be the highest priority, and an allegation, suspicion or report of abuse should be dealt with as a priority over other work.

Staff should share concerns with colleagues and report all concerns to their line manager without delay and update MIS.

7.2 The Role of Managers/Safeguarding Officers

Managers/Safeguarding Officers are responsible for a decision about what action is to be taken. They are responsible for ensuring procedures are followed and notifying and consulting with other agencies. They must:

- Deal with immediate needs to ensure safety of the child/vulnerable adult.
- Clarify the facts and decide if the situation falls under this procedure and reporting requirements
- Inform senior managers and other relevant agencies as required

- Complete relevant form/s, or ensure these are completed by staff in their management, and ensure concerns are confidentially documented elsewhere e.g. case files, supervision etc.

Managers/Safeguarding Officers will ensure they know the contact details of their local Social Services office and Safeguarding contact, and that these are provided to staff.

They will also ensure that MIS is maintained and contain relevant records, including:

- Information on the abuse alert)
- Referral logs
- Copies of customer case files/staff records as appropriate

7.3 Abuse raised by a customer about another customer

Where a customer raises concerns regarding the possible abuse of another customer, if the customer that the concern relates to does not wish to address this or reports it to be an untrue statement, this should be respected. However, staff should monitor the situation until any concerns are dispelled.

- 7.4 It is not the responsibility of TRH Group staff and volunteers to decide whether a child or vulnerable adult is being, or has been, abused or whether or not someone poses a risk to the welfare of a child or vulnerable adult. Staff are not expected to be an expert on child or adult abuse, but it is the responsibility of all staff to take action to prevent the suffering of a child or vulnerable adult.

8.0 DEALING WITH EVIDENCE OR ALLEGATIONS OF ABUSE

8.1 Ensure Safety of Children and Vulnerable Adults

It is essential that the child/vulnerable adult who may be experiencing abuse is safeguarded as the first priority.

Upon a concern expressed by, or concerning a child or vulnerable adult, the staff member should:

- Take the allegation seriously (regardless of frequency of the allegation/concern being expressed).
- Stay calm.
- Listen patiently.
- Reassure the person that they are doing the right thing in telling you.
- Explain what you are going to do.
- If appropriate remove the person from the vicinity where abuse is / has occurred.
- If necessary, contact emergency medical services, or police.
- Record all elements relating to the matter in question, and the date.
- Ensure ongoing support and counselling for the customer is provided through relevant agencies.

In the course of the above action, the staff member should inform their line manager at the earliest opportunity, and take advice. In the event of the allegation involving the line manager, then the information should be passed to

the next tier of management. Staff can also use the Whistleblowing Line (See Annexe 1)

It may be necessary to offer alternative accommodation if they are in danger or the psychological impact of the abuse is great. This must be discussed and agreed with the appropriate manager.

Where the customer concerned is being supported in their own accommodation, or this is provided by another agency, and they are at risk in this accommodation, staff may need to liaise with the relevant agency, in line with these procedures.

See Receipt of Complaint for further details on action to take, at 8.3 below.

8.2 Employees as Abusers

Allegations or concerns of abuse of customers by employees will be investigated thoroughly, and reported to senior management, who may suspend an employee, and this may result in a full disciplinary hearing.

Where substantiated evidence is found that abuse from an employee has occurred, this will be defined as gross misconduct and may result in dismissal from the organisation. The police and other relevant Government Bodies will all be informed. The customer's family and the immediate professional carers will also be informed of the allegation/occurrence, with the consent of the customer (where they are able to make an informed decision).

The DBS will be informed as appropriate.

Where situations do not constitute gross misconduct by an individual employee, for example where there is institutional abuse, where bad practice or poor management occurred, this will be managed through performance monitoring and relevant action taken by senior managers in the organisation.

8.3 Receipt of complaint of abuse

Reports of abuse should be documented on MIS and the relevant manager immediately informed. An investigation of the allegations should be carried out, and documented. The senior staff member will immediately consult with the line manager or in his/her absence a member of the Executive Team. Managers must also seek advice from the People Team in TRH Group where the complaint involves a member of staff.

The manager will decide how to investigate the complaint, and who will undertake the investigation with advice from a more senior manager. Staff should not approach/interview the alleged perpetrator in relation to the matter, this will be carried out by the investigating officer.

Where the complaint concerns an employee of the organisation, the member of staff that the complaint relates to should be seen in person if on duty, or contacted at home, by a manager, once the manager has gained advice from the People Team and senior management. The staff member concerned will be informed that a complaint has been made and may be informed that they will

be suspended immediately pending a full disciplinary hearing, based on initial investigations.

Where the allegation is a financial impropriety, Two Rivers Housing Group fraud procedures take precedence over the procedure stated here.

Line managers/senior managers will ensure Police/Social Services are informed where appropriate, and that all referrals to other agencies are recorded on MIS and updated as appropriate.

8.4 Investigation

If the abuse allegation/concern involves a member of staff, following suspension, the Line Manager, or other relevant manager/department, will comprehensively investigate the complaint following disciplinary procedures and advice from the People Team.

S/he may need to structure a series of meetings with potential witnesses, to fully investigate the complaint. Written statements will be obtained. Having made a full investigation s/he will report the findings to the manager/senior management/People Team. The senior manager will then decide on the need for a disciplinary hearing in conjunction with the People Team. If the alleged abuser is the manager, their line manager or another appropriate manager/department, such as the People Team, must be informed and conduct the investigation.

8.5 Consultation with the customer's family

A sensitive approach will need to be adopted in both informing and supporting the customer's family in relation to the occurrence/allegation. Reassurance must be given on the nature of the allegation and the process within which it is being investigated. Wherever possible, consent from the customer must be sought regarding consultation with their family.

8.6 Staff Support

During and following the completion of disciplinary proceedings, sensitive support should be offered to other staff affected by the incident, with opportunities to openly discuss and express their feelings, and record their account of the situation. Allegations and occurrences of abuse can have a profound effect on team dynamics and team working. Staff should be assisted in team building and restoring positive working relationships.

8.7 Non-employees

Staff may observe or receive reports of abuse of customers relating to nonemployees. These will be reported immediately to the manager, who will make a written report of the allegation/occurrence. This will be discussed with, and investigated by, senior management. Reports will be made to the family, the relevant Local Authority and the Police, with consent by the person who has been abused wherever possible.

Where abuse occurs outside the property, it is only possible for Two Rivers Housing Group staff to report it as a crime, or to Social Services etc. An internal investigation would not be appropriate in this circumstance.

8.8 Customers

Where a customer is the alleged perpetrator, action must be taken in accordance with this policy. The relevant agencies, e.g. Police, Social Services, must be contacted and advice from senior management sought.

If the allegation of abuse is substantiated through evidence, the customer may need to be removed from the vicinity of the person who has suffered the abuse. This will be effected through the immediate evictions procedure, scheme barring/exclusion policy, or anti-social behaviour procedures may need to be instigated. In this instance, managers should refer to the relevant organisational policy/policies.

Where customers are the alleged perpetrator, support, counselling and assistance will be offered to other customers who have witnessed the abuse.

8.9 Investigating officers

Investigating officers should be provided with appropriate support from their line managers depending on their experience and the complexity of the investigation.

Line managers should countersign/confirm accuracy of all records/ information collected.

This includes:

- Records collected during investigation/assessment.
- Records of any decisions taken.
- Supervision (where appropriate).
- Incident reports

These should be held securely in the safeguarding file at the TRH Group offices.

The health and safety of staff conducting investigations should be considered by line managers, and a health and safety risk assessment carried out if necessary, and monitored through risk management planning.

9.0 Disclosure and Barring Service

9.1 From October 2009, the POVA (Protection of Vulnerable Adults) list, List 99 and POCA (Protection of Children Act) lists are replaced by Barred Lists which are issued by the Disclosure and Barring Service (DBS).

It is illegal for an employer to knowingly employ someone in a regulated activity when they know that person is barred from that regulated activity. It is also an offence for a barred person to work or seek to work in regulated

activity with a sector from which they are barred. In the event of any employees appearing on the Barred List guidance will be provided by DBS along with the confirmation.

The Organisation will comply with all vetting and barring requirements under the new regulations.

WHISTLE-BLOWING GUIDELINES FOR STAFF ON THE ABUSE OF VULNERABLE CUSTOMERS
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Two Rivers Housing aims to ensure that all staff feel able to report suspected or witnessed abuse at the earliest opportunity to a Manager who can investigate the allegations fully.

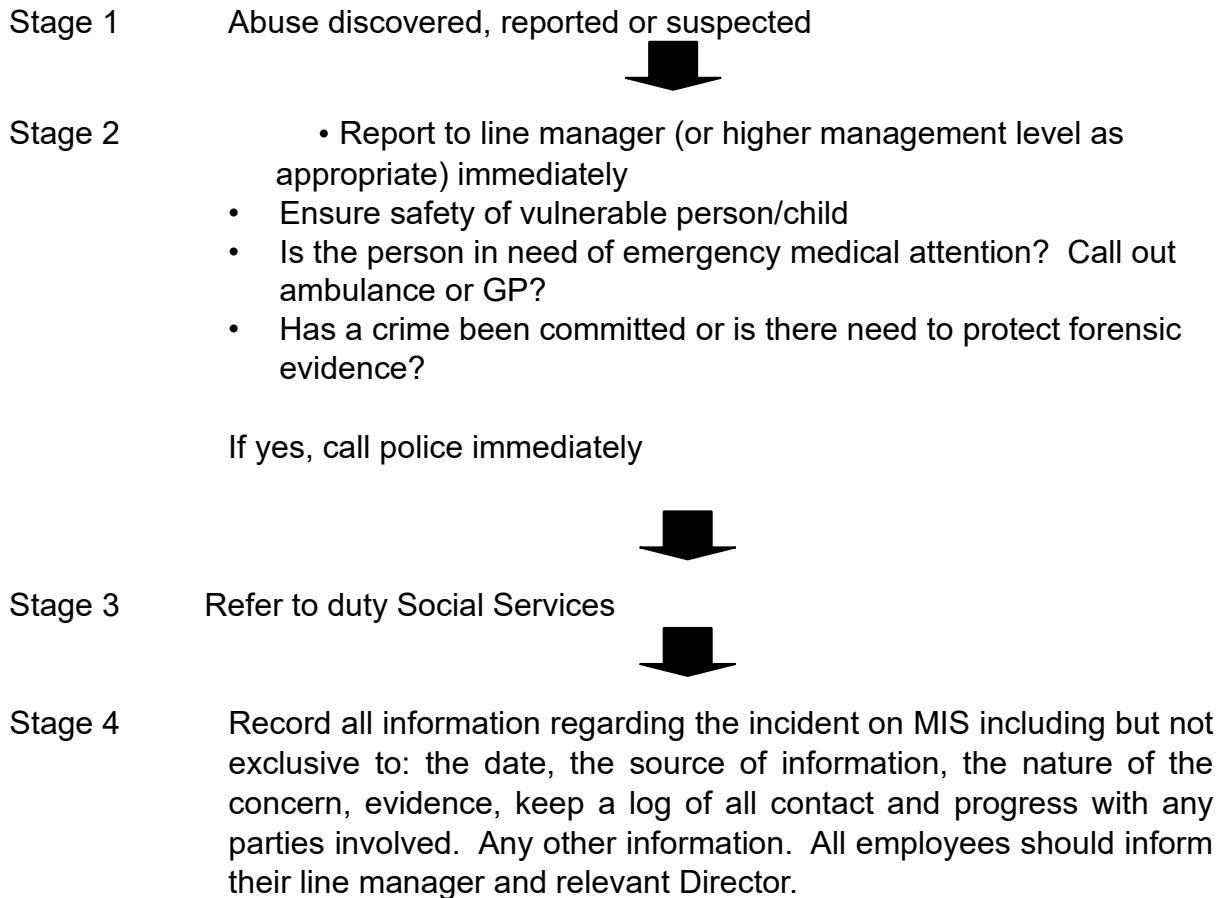
The following procedure describes the actions to be taken by all staff of Two Rivers Housing Group, to ensure that customers, staff and volunteers are properly supported and protected. It also describes what actions need to be taken when questionable practice occurs.

These guidelines supplement, and are not intended to replace, the TRH Whistle Blowing Policy.

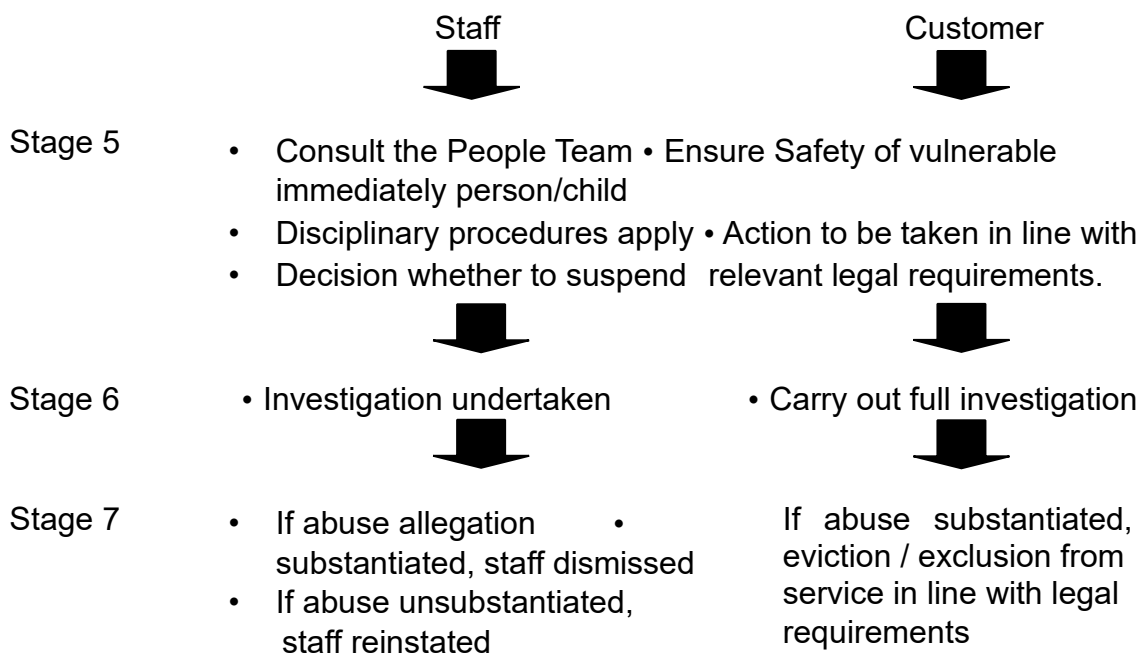
WHISTLE-BLOWING

1. If a member of staff suspects, or identifies, that actions taken are exploitative or abusive to customers, or to staff or volunteers, or that the actions are grossly unethical, the staff member concerned should immediately contact their Line Manager.
2. If either the discussions with their manager have been ineffective, or they are unwilling to talk to their manager because of his / her involvement with the abuse or unethical practice, or they fear reprisals, the staff member should immediately contact a member of senior management.
3. The Manager informed, together with other relevant managers / departments such as the People Team, will decide the strategy for investigating the allegations. This investigation will be initiated within 24 hours of receiving the allegations.
4. There are specific assurances in the “Whistle Blowing Policy” that staff will be supported and protected from reprisals or victimisation. Support will be given to the person making the allegations. This is especially relevant when they are isolated, they fear reprisals or the investigation itself will identify the staff member as the person who has informed management and the staff member is uncomfortable with this. Staff who ‘whistle blow’ can remain anonymous and have wishes recorded and respected, however at a later date their identity may be required, particularly if legal action is indicated.
5. The staff member making the allegations will be informed of the results of the investigation, taking into consideration the need for confidentiality. If it is required to be reported to the police, the ‘whistle blower’ will be informed.

CHILD/ADULT ABUSE REFERRAL FLOWCHART



WHO IS THE ALLEGED/ SUSPECTED ABUSER?





Stage 8

- If dismissed refer to DBS as appropriate

Mental Capacity Act 2005 - summary

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. It makes it clear who can take decisions in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. Guidance on the Act is provided in a statutory Code of Practice.

The whole Act is underpinned by a set of five key principles stated at Section 1:

- A presumption of capacity - every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- That individuals must retain the right to make what might be seen as eccentric or unwise decisions;
- Best interests - anything done for or on behalf of people without capacity must be in their best interests; and
- Least restrictive intervention - anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.

What does the Act do?

The Act enshrines in statute current best practice and common law principles concerning people who lack mental capacity and those who take decisions on their behalf. It replaces current statutory schemes for enduring powers of attorney and Court of Protection receivers with reformed and updated schemes.

The Act deals with the assessment of a person's capacity and acts by carers of those who lack capacity

- Assessing lack of capacity - The Act sets out a single clear test for assessing whether a person lacks capacity to take a particular decision at a particular time. It is a "decision-specific" test. No one can be labelled 'incapable' as a result of a particular medical condition or diagnosis. Section 2 of the Act makes it clear that a lack of capacity cannot be established merely by reference to a person's age, appearance, or any condition or aspect of a person's behaviour which might lead others to make unjustified assumptions about capacity.
- Best Interests - Everything that is done for or on behalf of a person who lacks capacity must be in that person's best interests. The Act provides a checklist of factors that decision-makers must work through when deciding what is in a person's best interests. A person can put his/her wishes and feelings into a written statement if they so wish, which the person making the determination must consider. Also, carers and family members gain a right to be consulted.
- Acts in connection with care or treatment. Section 5 clarifies that, where a person is providing care or treatment for someone who lacks capacity, then the person can provide the care without incurring legal liability. The key will be proper assessment of capacity and best interests. This will cover actions that

would otherwise result in a civil wrong or crime if someone has to interfere with the person's body or property in the ordinary course of caring. For example, by giving an injection or by using the person's money to buy items for them.

- Restraint/deprivation of liberty. Section 6 of the Act defines restraint as the use or threat of force where an incapacitated person resists, and any restriction of liberty or movement whether or not the person resists. Restraint is only permitted if the person using it reasonably believes it is necessary to prevent harm to the incapacitated person, and if the restraint used is proportionate to the likelihood and seriousness of the harm.

Section 6(5) makes it clear that an act depriving a person of his or her liberty within the meaning of Article 5(1) of the European Convention on Human Rights cannot be an act to which section 5 provides any protection.

The Department of Health has issued interim advice to the NHS and local authorities on the implications of the European Court of Human Rights judgment in *HL v United Kingdom* (the "Bournewood" case), pending the development of proposals for new procedural safeguards for the protection of those people falling within the "Bournewood gap".

The Act deals with two situations where a designated decision-maker can act on behalf of someone who lacks capacity

- Lasting powers of attorney (LPAs) - The Act allows a person to appoint an attorney to act on their behalf if they should lose capacity in the future. This is like the current Enduring Power of Attorney (EPA), but the Act also allows people to let an attorney make health and welfare decisions.
- Court appointed deputies - The Act provides for a system of court appointed deputies to replace the current system of receivership in the Court of Protection. Deputies will be able to take decisions on welfare, healthcare and financial matters as authorised by the Court but will not be able to refuse consent to life-sustaining treatment. They will only be appointed if the Court cannot make a one-off decision to resolve the issues.

The Act creates two new public bodies to support the statutory framework, both of which will be designed around the needs of those who lack capacity

- A new Court of Protection - The new Court will have jurisdiction relating to the whole Act and will be the final arbiter for capacity matters. It will have its own procedures and nominated judges.

- A new Public Guardian - The Public Guardian and his/her staff will be the registering authority for LPAs and deputies. They will supervise deputies appointed by the Court and provide information to help the Court make decisions. They will also work together with other agencies, such as the police and social services, to respond to any concerns raised about the way in which an attorney or deputy is operating. A Public Guardian Board will be appointed to scrutinise and review the way in which the Public Guardian discharges his/her functions. The Public Guardian will be required to produce an Annual Report about the discharge of his/her functions.

The Act also includes three further key provisions to protect vulnerable people

- Independent Mental Capacity Advocate (IMCA) - An IMCA is someone appointed to support a person who lacks capacity but has no one to speak for them. The IMCA makes representations about the person's wishes, feelings, beliefs and values, at the same time as bringing to the attention of the decision-maker all factors that are relevant to the decision. The IMCA can challenge the decision-maker on behalf of the person lacking capacity if necessary.

- Advance decisions to refuse treatment - Statutory rules with clear safeguards confirm that people may make a decision in advance to refuse treatment if they should lose capacity in the future. It is made clear in the Act that an advance decision will have no application to any treatment which a doctor considers necessary to sustain life unless strict formalities have been complied with. These formalities are that the decision must be in writing, signed and witnessed. In addition, there must be an express statement that the decision stands "even if life is at risk".
- A criminal offence - The Bill introduces a new criminal offence of ill treatment or neglect of a person who lacks capacity. A person found guilty of such an offence may be liable to imprisonment for a term of up to five years.

The Act also sets out clear parameters for research

- Research involving, or in relation to, a person lacking capacity may be lawfully carried out if an "appropriate body" (normally a Research Ethics Committee) agrees that the research is safe, relates to the person's condition and cannot be done as effectively using people who have mental capacity. The research must produce a benefit to the person that outweighs any risk or burden. Alternatively, if it is to derive new scientific knowledge it must be of minimal risk to the person and be carried out with minimal intrusion or interference with their rights.
- Carers or nominated third parties must be consulted and agree that the person would want to join an approved research project. If the person shows any signs of resistance or indicates in any way that he or she does not wish to take part, the person must be withdrawn from the project immediately. Transitional regulations will cover research started before the Act where the person originally had capacity to consent, but later lost capacity before the end of the project