

**Safe Guarding Vulnerable
Adults Policy**

Peacehaven Trust Policy Document				
<i>Previous policy name: Safeguarding of Residents and Staff from Abuse</i>				
Linked with the following internal documents		Complaints Procedure Risk Management Policy Lone Worker Policy Code of Conduct Allegations Policy		
Rev. No.	Approved PHT Management Team	Approved by PCI Head of Disabilities	Launched Staff Members	Operational Period
2 July 2017	22 nd August 17	28 th August 2017	31 st August 2017	3 Years
3 July 2020	15 th September 2020	20 th May 21	20 th May 21	3 Years
4 Mar 2024	7 th March 2024	25 th March 2024	25 th March 2024	3 Years

1.0 Purpose

It is the policy of Peacehaven Trust that its residents and staff will take every care to ensure that all those who are involved in its services are protected from acts (Or omissions) of mistreatment of any kind. For the purposes of this document an act of mistreatment is any act which falls under the headings of Abuse, Neglect or Exploitation, as identified in the Health Service Executives, *National Safeguarding Vulnerable Persons at Risk of Abuse, National Policy & Procedures 2014*. In all decisions affecting residents, the welfare of the resident will be of paramount concern.

1.1 Policy Statement:

Peacehaven Trust operates a ‘No Tolerance’ approach to any form of Mistreatment (abuse and neglect). This policy is based on the HSE Adult Safeguarding Policy ‘Safeguarding Vulnerable

Persons at Risk of Abuse – National Policy and Procedures, 2014’.

1.2 Peacehaven Trust’s MANDATORY Practice

Any person in Peacehaven Trust who knows or suspects that a resident is subject to any act of mistreatment is obliged to report this immediately in accordance with the procedure set out below. It is regarded as a serious disciplinary offence under Peacehaven Trust’s disciplinary policy for a staff/volunteer/student member not to immediately report concerns of an adult protection nature.

1.3 Scope:

All staff/volunteer/student fall under the category of ‘staff’ for the purposes of this policy and are obliged to co-operate fully with all aspects of it.

People associated with our services, either as residents or staff, may be injured or suffer trauma. There are a wide variety of causes. The symptoms of a person having suffered may or may not be obvious and may emerge in many ways.

2.0 Obligations on Peacehaven Trust

2.1 Peacehaven Trust will deal with any allegations of an act or omission of mistreatment with the highest possible standards of confidentiality, conscious at all times of the rights and welfare of residents, families and staff and of the need for fairness to all concerned. Regarding confidentiality, managers and staff involved in the inquiry will discuss the matter only with those managers or staff who need to know about it as part of the inquiry. All staff are obliged to comply with any inquiries.

3.0 Reference Documents This Adult Protection Policy has given due consideration to the following publications:

- Safeguarding Vulnerable Persons at Risk of Abuse. National Policy & Procedures incorporating Services for Elder Abuse and for Persons with a Disability. Social Care Division, HSE (2014)
- Trust in Care – Policy for Health Service Employers on Upholding the Dignity and Welfare of Clients and the Procedure for Managing Allegations of Abuse against Staff

Members (2005)

- Dignity at Work Policy for Health Services (Health Services National Partnership Forum 2004)
- National Standards for Residential Services for Children and Adults with Disabilities (2013)
- Domestic Violence Acts 1996 and 2002
- Non-fatal Offences Against the Person Act 1997
- Education Act 1998
- The Data Protection Acts 1988 and 2003
- Protected Disclosure Act 2014
- Freedom of Information Acts 1997 and 2003
- Health Acts 1947 to 2008
- Criminal Justice Act 2006
- U.N. Convention on the Rights of People with Disabilities 2007
- Abuse and Neglect of Older People in Ireland: Report on the National Study of Elder Abuse and Neglect
- The Criminal Justice (Withholding of information on offenses against Children and Vulnerable Persons) Act 2012

3.1 This Adult Protection Policy does not stand alone from any other Peacehaven Trust policy or procedure. This policy has therefore been written with due consideration given to all Peacehaven Trust Policies, Procedures, Guidelines and Codes of Practice. These policies and legislation are binding upon all staff of Peacehaven staff who have a duty to be familiar with and abide by them and any amendments thereto.

4.0 Definition and recognition of Acts of Mistreatment Introduction

Mistreatment of people can be defined in many different ways. An act of mistreatment is any act or omission, or failure to act, which results in a breach of a vulnerable person's human rights, civil liberties, physical, mental and spiritual integrity, dignity or general well-being, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative.

Mistreatment may take a variety of forms.

Mistreatment includes, but is not limited to:

- Abuse: Physical, emotional, financial or material, sexual, discriminatory, and institutional.
- Neglect: Emotional (Psychological), financial or material, or the concept of Self-neglect

Symptoms of mistreatment may be as the result of a single act or repeated over a period of time. It may be from one category or a combination of categories. Mistreatment may occur at any time in any setting. In a broader sense mistreatment encompasses violation of any legal or human rights that are accorded to members of society. These rights promote concepts of self-respect and dignity, and include the rights to liberty, property, privacy and free speech. A person may be subject to more than one form of mistreatment at any given time.

4.1 Abuse

Abuse may be defined as “any act, omission or failure to act, which results in a breach of a vulnerable person’s human rights, civil liberties, physical, mental and spiritual integrity, dignity or general wellbeing, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative. Abuse may take a variety of forms”.

4.1.1 Emotional Abuse (Psychological abuse)

Emotional Abuse can be described as the adverse effect on the behaviour and emotional development of a person caused by persistent or severe emotional ill treatment or rejection. It occurs when a residents’ need for affection, approval, consistency and security are not met. It is rarely manifested in terms of physical symptoms. It is conduct that causes mental anguish to the person and includes but is not limited to:

- Verbal berating, harassment, or intimidation
- Threats of punishment or deprivation
- Treating the person like infant or child
- Isolating the person from family, friends or activities/services.
- Blaming, controlling, coercing, harassment.

4.1.2 Physical Abuse Physical abuse involves acts of violence that may result in pain, injury, impairment or disease. Examples include but are not limited to:

- Pushing, striking, slapping or pinching
- Force Feeding
- Incorrect Positioning
- Improper use of physical restraints or Medications
- Over-Medication
- Withdrawing Medication
- Hiding Medication
- Administering someone else's medication
- Not reviewing medication/treatments regularly
- Inappropriate sanctions.

We may have cause to suspect physical abuse when a person presents with unexplained injuries, when the explanation is not consistent with medical findings, or when contradictory explanations are given by the person and caregiver/others. Signs of physical abuse include but are not limited to: bruises, welts, lacerations, fractures, burns, multiple injuries and laboratory findings indicating medication overdose or under medication.

4.1.3 Financial or Material Abuse This is failure to use available funds and resources necessary to sustain or restore the health and well-being of the person. This involves misuse of the person's income or resources for the financial or personal gain of the caregiver, and includes but is not limited to:

- Denying the person a home
- Stealing money or possessions
- Coercing the person into signing contracts (financial or otherwise) or assigning durable power of attorney to someone, purchasing goods, or making changes to their will.

Financial abuse or neglect could also be considered if the person is suffering from substandard care despite adequate resources, if the person seems confused about or unaware of his or her financial situation or has suddenly transferred assets to another. People with disabilities are vulnerable to this type of mistreatment, yet it may be most difficult to identify.

4.1.4 Sexual Abuse

Sexual abuse is defined as: "The involvement of dependant developmentally immature children and adolescents in sexual activities they do not truly comprehend, to which they are unable to give informed consent, or that violate the social taboos of the family roles." (Schechter, M.D. & Roberge, L. 1976).

The above definition relates to children and adolescents up to the age of eighteen. It should be further noted that Section 5 of the Criminal Law (Sexual Offences) Act, 1993 deals with the protection of intellectually impaired persons. Section 5 defines "mentally impaired" as follows:

"...'mentally impaired' means suffering from a disorder of the mind, whether through mental handicap, or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation."

Accordingly, those who are intellectually or learning disabled are also due the same protection from exploitation and abuse as are children.

To be specific, activities which constitute sexual abuse may include:

- (a) Fondling of the resident's genital area.
- (b) Digital manipulation of resident's genital area.
- (c) Instances where resident is "asked" to fondle or touch abuser's genital area.
- (d) Exhibitionism by abuser.
- (e) Instances where resident is "asked" to show their genitals to abuser.
- (f) Instances where resident is "asked" to masturbate abuser or self.
- (g) Masturbation of resident by abuser.
- (h) Sodomy.
- (i) Oral intercourse.
- (j) Instances where attempted intercourse (i.e. without penetration by the penis) occurred.
- (k) Instances where sexual intercourse occurred.
- (l) Other practices which would come under the above definition, including inappropriate use of internet sites etc.

4.1.5 Discriminatory Abuse:

Discriminatory is any abuse on any of the 9 grounds set out in the Equal Status Act 2000 and subsequently the Equality Act 2004 i.e.: Gender, Civil Status, Family Status, Age, Race, Religion, Disability, Sexual Orientation, Membership of the Traveler community.

4.1.6 Institutional abuse

Institutional abuse occurs when the systems, processes and / or management of these is failing to safeguard a number of adults leaving them at risk of, or causing them, harm. Institutional abuse can also occur when the routines, systems and norms of an organisation override the needs of those it is there to support, or fail to provide those individuals with an appropriate quality of care. This can be the product of both ineffective and/or punitive management styles, creating an environment within which abuse can take place, intentional or otherwise.

4.1.7 Violation of Personal Rights

Violation of Personal Rights occurs when providers ignore the person's rights and capability to make decisions for her / himself, this failure to respect the person's dignity and autonomy may include, but is not limited to:

- Denying the person his or her rights to privacy
- Denying the person, the right to make decisions regarding healthcare or other personal issues

4.1.8 Note: The definitions of abuse set out above are largely based on the definitions set out in: the Health Service Executive's *Safeguarding Vulnerable Person's at Risk*, the Department of Health and Children's *Children First* (2011), National Guidelines for the Protection and Welfare and Trust in Care, Policy for Health Service Employers on Upholding the Dignity and Welfare of Patients/Clients and the Procedure for Managing Allegations of Abuse against staff. These guideline documents ascertain some people are more vulnerable to abuse than others. These include children and adults with disabilities who for one reason or another are separated from family members and who depend on others for their care and protection.

4.1.9 Neglect

Neglect is normally defined in terms of an omission, where a person suffers significant harm or

impairment of development by being deprived of food, clothing, warmth, hygiene, intellectual stimulation, supervision and safety, attachment to and affection from others, or medical, social and educational care/services.

4.1.10 Physical Neglect

Physical neglect is characterised by a failure to provide the services that are necessary for optimal functioning or to avoid harm. This may include

- Withholding of health maintenance care, including adequate meals or hydration, physical therapy or hygiene.
- Failure to provide and maintain physical aids such as spectacles, hearing aids or false teeth
- Failure to provide adequate and effective safety precautions

Physical neglect maybe suspected in the presence of dehydration, malnutrition, decubitus ulcers, poor personal hygiene or a lack of compliance with medical regimens.

4.1.11 Emotional Neglect (Psychological Neglect)

This can be defined as the failure to provide the individual with social stimulation. This may involve:

- Leaving the person alone for long periods
- Ignoring the person or giving him or her the “silent treatment”
- Isolating the person from family, friends or activities.

4.1.12 Financial or Material Neglect

This is failure to use available funds and resources necessary to sustain or restore health and well-being of the person.

4.1.13 Self-neglect:

Unlike other acts of mistreatment, the signs of self-neglect can differ enormously from one individual to another. Essentially, self-neglect must involve a move away from what is typical for an individual and they must show an unwillingness to provide for themselves goods or services that are required to live safely and independently. This unwillingness must be

considered in line with the principles of choice. Unlike other acts of mistreatment, self-neglect should not be considered based on one single event. It should be noted as a series of events or behaviours. Typical definitions of self-neglect identify one or more of the following areas: inattention to health or hygiene, the lack of performance of self-care tasks, a refusal to provide goods or services that are necessary to avoid physical or emotional harm or pain, not taking actions that prevent conditions or situations that adversely affect the health and safety of oneself or others.

4.1.14 Who may abuse?

Anyone who has contact with a vulnerable person may be abusive, including a member of their family, community or a friend, informal carer, healthcare/social care, other worker or volunteer.

- Familial Abuse - Abuse of a vulnerable person by a family member.
- Professional Abuse - Misuse of power and trust by professionals and a failure to act on suspected abuse, poor care practice or neglect.
- Peer Abuse - Abuse, for example, of one adult with a disability by another adult with a disability.
- Stranger Abuse - Abuse by someone unfamiliar to the vulnerable person (adapted from National Policy on Safeguarding Vulnerable Persons at risk of abuse).
- Institutional Abuse – Abuse by an organisation by use of its systems to adversely affect, and impair upon the rights of an individual.

5.0 Prevention of Acts of Mistreatment

Peacehaven Trust is committed to promoting the well-being of persons supported and providing an environment where they are treated with dignity and respect. Peacehaven Trust has risk management procedures in place for the assessment and management of risk with regards to safeguarding. Peacehaven Trust is highly committed to its staff and to providing them with the necessary supervision, support and training to enable them to provide the highest standards of care. Proper operation of organisational policies and systems enable staff are aware of the standards of care expected of them and also to protect them from situations which may render them vulnerable to allegations of mistreatment.

6.0 Communication of this Policy

A copy of this policy is made available to all staff. Regular briefing sessions, primarily through staff team meetings, will be held for all staff to ensure that they are aware of their obligations towards residents and know the action to take in the event of an alleged or suspected act of mistreatment. At briefing sessions staff will be made aware of their role in promoting a culture of vigilance and clearly informed that the safety and well-being of residents must take priority over all other considerations, including loyalty to work colleagues. Staff will be assured that their concerns will be treated seriously and they will be fully supported through the process, regardless of whether or not an act of mistreatment is found to have occurred.

Staff will be given appropriate guidance on recognising behaviours that indicate that a resident may be at risk and on dealing with complaints about acts of mistreatment from residents, colleagues, family members, or any other person.

Team meetings and Handovers can all operate to ensure appropriate communication of this policy through their use as regular reminders of concerns for individuals.

7.0 Informing and Empowering Residents

Residents via their keyworker will be informed and empowered to help them understand and be aware of the definitions of Acts of Mistreatment. When individuals are being inducted into any part of the service they should be advised of the appropriate channels for reporting adult protection concerns.

8.0 Procedures for Receiving Complaints and Reporting

Information suggesting that an act of mistreatment may have occurred can come from a variety of sources. The matter may, for example, be raised by the person against whom the act is perpetrated, a concerned relative, or a staff member. It may come in the form of a complaint, it may be an expression of concern, or it may come to light while carrying out an assessment.

Any staff member in Peacehaven Trust who receives information, knows, suspects or is concerned that a resident is subject to any act of mistreatment, is at risk of being subjected to acts of mistreatment or is carrying out such acts, must report it immediately to a care manager or the Director of Services.

The staff member is not responsible for deciding if an act of mistreatment has occurred but is

obliged to report suspicions or allegations so that appropriate action can be taken.

8.1 The Designated Officer

Within Peacehaven Trust each Care Manager and the Director of Services is a Designated Officer who have responsibility to conduct 'Preliminary Screenings' and to report allegations to the HSE Safe Guarding Team and other authorities.

8.2 The Safeguarding Champion

PCI have a dedicated appointed officer who is the Safeguarding Champion. The Regional Managers are Deputy Safeguarding Champions. All incidents or issues of concern need to be referred by a Peacehaven manager to a PCI Safeguarding Champion for consideration prior to a timely submission of a Preliminary Screening Report to the Adult Protection Team. Notifications to HIQA must be made within the 3-day limit as required.

8.3 Staff Response to Allegation of Abuse

Whatever the situation there is likely to be a sense of uncertainty about the course of action to be taken. Staff may find themselves confronted by allegations of abuse in different ways, for example:

- A resident may describe an incident which occurred in the past.
- A resident may tell them about current abuse.
- Staff may witness an incident.
- Staff may suspect abuse due to emotional, physical or behavioural signs with which they will be familiarised by means of staff training.
- An incident may be reported to staff by another agency, family member, friend or other.

8.3.1 Listen and be supportive

A person who is being abused may find disclosure difficult due to a sense of betrayal or fear of the consequences of disclosure. They are likely to speak to someone they trust. If that person is you, then you will need to respond in a supportive manner - be willing to listen, be willing to take the person seriously and be willing to offer help. Staff training courses aim to teach staff how to respond appropriately to initial disclosure and Management will provide you with full support.

8.3.2 Confidentiality

The resident may ask you not to tell anyone. You will need to explain that in order to help them you will need to tell the people who can help and can make the alleged abuse stop. Do not make promises of confidentiality which you will not be able to keep. You will, however, need to regard what you have been told as strictly confidential and will only report on a "need to know" basis as outlined below.

8.3.3 Using Incident Report Form

A member of staff noting or suspecting abuse or observing an abusive incident should at the earliest possible moment note that event or the circumstances giving rise to suspicion. This should be done by completing the IT system accident/incident report form and notifying Management of same without delay.

It is the responsibility of the staff member to personally write the relevant comments and, if practical, to have their report reviewed by some other member of staff who can verify from personal knowledge the information written down – remember only write facts as disclosed to you, not your opinions.

Peacehaven Trust's response to allegations of abuse is based on the Department of Health Child Abuse Guidelines - Revised Edition July 1987, and Department of Health Guideline "Trust in Care" 2006.

8.4 Reporting Procedures

The following reporting procedures should be followed by staff in the event of an act(s) of mistreatment being suspected or alleged. In the event that the staff member feels inhibited for any reason from reporting his/her concerns or if they feel that inappropriate or insufficient action has been taken, they should raise the matter directly with the Director of Services.

A) Staff receives a complaint of an act of mistreatment from another resident, relative/guardian or member of the public.

A staff member who receives a complaint of an act of mistreatment from a resident, relative/guardian or a member of the public should ensure that the details are fully documented including dates, times and any witnesses to the alleged incident. The statement should be read

back to the person making the complaint to ensure accuracy. The staff member should then report the matter immediately to a Care Manager.

B) Staff member suspects an act of mistreatment

A staff member who suspects that a resident may have been subject to an act of mistreatment should notify a care manager without delay. The staff member should outline in writing the grounds on which his/her concerns are based. The report should be submitted without delay to a care manager or the Director of Services. **The staff member should not question the person against who the complaint is made.**

C) Staff observes another staff or resident engaging in an act of mistreatment towards a resident.

A staff member who witnesses another staff engaging in inappropriate behaviour towards a resident should intervene or seek help to stop the behaviour. If there is suspected, witnessed, repeated inappropriate behaviour between residents the staff member should immediately report the incident to a care manager, or the Director of Services, and complete a written report as soon as possible (before going off duty) or within a fixed time frame set by them. If the staff member is not 'on duty' when the suspicion arises, it is imperative that they take the time to contact their line manager or the Director of Services.

8.4 Management of Complaints, Suspicions and Allegations of Acts of Mistreatment

Preliminary Screening

In the event that a staff member receives a complaint/concern of any an act of mistreatment, the Designated Officer or Care Manager On-Call must be informed immediately by telephone or in person so that they can initiate a preliminary screening to establish the facts pertaining to the concern. The Deputy Safeguarding Champion will be informed by a Designated Officer. The Designated Officer will lead on the process to ensure the preliminary screening is completed within 3 working days following the report. It is not the responsibility of the staff to conduct the preliminary screening. Additional expertise may be added as appropriate.

The Designated Officer will inform, where relevant, the Director of Services who shall inform the Chair of the Board/PCI Regional Manager. The Designated Officer will also report all cases of acts of mistreatment or suspected acts of mistreatment to the Safety and Protection of Vulnerable Persons team in the HSE CHO6.

The Designated Officer will contact the appropriate person in the HSE to seek any advice of the matter. The Designated Officer will agree a plan of action with the relevant HSE Person and the subsequent steps to be taken by all concerned.

In addition to advising the HSE of the matter, the Director of Services or a Care Manager must make notification to the Health Information and Quality Authority. In relation to “any allegation suspected or confirmed, of abuse of any resident”. This must happen within 3 working days using HIQA Form NF06. In addition to this notification to HIQA, “a copy of the report detailing the Registered Provider’s internal investigation in to the alleged abuse must be submitted within 10 days to the Authority, along with the Centre’s policy on Protection of Vulnerable People. If the investigation is not complete within 10 days, a draft report must be submitted outlining the steps that have been taken, the reasons why the investigation report is not complete and the next steps the registered provider intends to take to ensure the resident’s safety” (extracted from Form NF06D on www.hiqa.ie on 18/11/2013).

In addition, an NF07 form is required to be submitted to HIQA where a member of staff is under investigation.

8.4.1 The purpose of the preliminary screening is to ascertain if it is possible that an abusive interaction could have occurred. The preliminary screening of the complaint should be carried out by the designated officer, or a person(s) nominated by the designated officer with the specific purpose to establish if the alleged incident may have taken place. Under no circumstances should the preliminary screening attempt to establish whether or not the act of mistreatment actually occurred. The designated officer’s role with regard to preliminary screening must include the following:

- Following the preliminary screening, if the designated officer ascertains that there may be a case to investigate further, they must immediately notify the person against whom the complaint is made of the details of the allegation and advise him/her that a preliminary screening process is being undertaken. If the person against whom the complaint is made is a staff member, they must be advised in advance of his/her right to be accompanied at this meeting by a staff representative or work colleague. The designated officer must ensure that the details of the alleged or suspected act of mistreatment are documented. The Designated Officer will arrange for a physical or psychological assessment of the

resident to be carried out, where appropriate.

- The Designated Officer must consult with a member of the Management Team or appropriate professional colleague before he/she makes a final decision as to whether or not an act of mistreatment could have occurred.
- The outcome of the preliminary screening will be notified to the HSE SPT and actions after this point must be agreed with the HSE SPT.
- The outcome of any assessment/inquiry following preliminary screening must be reviewed with the SPT (VP) and a plan to address necessary actions approved.
- The Garda must be contacted where a criminal offence is believed to have occurred.

8.4.2 No Further Action

If the designated officer is satisfied that an act of mistreatment could not have occurred and no further action is warranted, s/he will keep a record of the decision on the staff member's personnel file. The record will contain details of the precise nature of the allegation and state that a preliminary screening in respect of the complaint has been carried out in accordance with this policy and that a decision has been made by (specify names of relevant individuals) that an act of mistreatment could not have occurred (giving the reasons for the decision) and therefore it is not necessary to proceed to a formal investigation. The purpose of this record is to protect the reputation of the staff member concerned.

8.4.3 Safeguarding Plan

If the preliminary screening suggests there are reasonable grounds for concern, the Designated Officer will have responsibility for ensuring a safeguarding plan will be drawn up. The Designated Officer has responsibility for the coordination of information and intervention at this stage and may appoint a safeguarding coordinator for this purpose. The plan should be implemented, even if in a preliminary form, within three weeks of the preliminary screening being completed. The safeguarding plan will outline a review schedule for full reviews at agreed intervals; these intervals will be at a minimum every 6 months for the commencement date of the plan. The plan may include, but is not limited to the following: 1. The Local informal process; 2. Internal Inquiry; 3. An Independent Inquiry; 4. Assessment and Management by the Safeguarding and Protection Team (Vulnerable Adults) (See appendix D for further details). It

should be person-centred and include positive actions to safeguard the person(s) at risk from further mistreatment and should promote recovery. It should also include consideration of what triggers or circumstances would indicate increasing risk of mistreatment for individual's and how this should be dealt with. The safeguarding plan will be informed by all stages of the process. Details of the Safeguarding plan, should be transferred to the residents 'Safeguarding Care Plan', which may contain the aggregate safeguarding details of several PSR safeguarding plans.

8.4.4 Investigations.

If the preliminary screening indicates that an act of mistreatment could have occurred then the matter will be referred by the Designated Officer at that point to the Deputy Safeguarding Champion; Disability Manager and the Chair of the Board, who will decide if formal investigation or alternative measure is necessary.

If it is decided that a formal investigation is warranted, a meeting will be arranged to advise the staff of the intention to carry out a formal investigation. The staff member will be advised of his or her right to be accompanied by a work colleague or trade union representative at investigation meetings. The staff will be given details of the complaint at the meeting and will be afforded an opportunity to make an initial response if s/he so wishes. S/he will be advised as to what happens next and told not to make contact with the complainant.

The staff member will be advised of support and counselling services that are available.

At an appropriate stage in the process, the Director of Services will take whatever protective measures are necessary to ensure that no resident or staff is exposed to unacceptable risk. These protective measures are not disciplinary measures and may include:

- * Providing an appropriate level of supervision.
- * Putting the staff member off duty with pay pending the outcome of the investigation.
- * Putting non-paid staff member off duty pending the outcome of the investigation.
- * Transfer to another service location.

The views of the staff member/staff will be taken into consideration when determining the appropriate protective measures to take in the circumstances but the final decision rests with Board.

A person may be suspended from duty pending the outcome of the investigation. This will be explained to the staff member via a meeting and also in writing that the decision to put them off duty is a precautionary measure and not a disciplinary sanction.

8.5 Conducting the Investigation

Principles governing the investigation process

- The investigation will be conducted thoroughly and objectively in strict accordance with the terms of reference and with due respect for the rights of the complainant and the rights of the staff member to be treated in accordance with the principles of natural justice.
- The investigation team will be determined by the Chair of the Board. The investigator will have the necessary expertise, as determined by consideration of the nature of the issues arising, the necessary skills, experience required and the terms of reference established.
- Confidentiality will be maintained throughout the investigation to the greatest extent consistent with the requirements of a fair investigation. It is not possible however to guarantee the anonymity of the complainant or any person who participates in the investigation.
- A written record will be kept of all meetings and records will be treated in the strictest confidence.
- The investigation team may interview any person who they feel can assist with the investigation. Staff members, volunteers and students are obliged to co-operate fully with the investigation process and will be fully supported throughout the process.
- Staff members, volunteers and students who participate in the investigation process will be required to refrain from discussing the matter with other staff members or persons outside the organisation this is in order to both respect the privacy of the parties involved and also to ensure that the investigation process is not compromised. Discussing any issues outside of the investigation will be considered a disciplinary offence.
- It will be considered a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness or to attempt to obstruct the investigation process in any way.

See Appendix B – The staff member’s right to silence in civil proceedings

See Appendix C – The Defense of Qualified Privilege

8.5.1 Steps in conducting the Investigation

- The investigation will be conducted by the investigative team determined by the Chair of the Board
- The investigation will be governed by clear terms of reference based on the written complaint and any other matters relevant to the complaint. The terms of reference of the Designated Officer will include making recommendations for action in addition to submitting a written report that will be reviewed by the Chair of the Board who will remain outside the investigative team. The Terms of Reference will also specify the following:
 - The investigation will be conducted in accordance with this policy;
 - The timescale within which the investigation will be completed – timetables will be approximate but every effort will be made to deal with the matter as speedily as possible;
 - The Designated Officer(s) may set time limits for completion of various stages of the procedure to ensure the overall timescale is adhered to;
 - Scope of the investigation i.e., the Designated Officer(s) will determine whether or not the complaint has been upheld and may make recommendations (other than disciplinary sanction) where appropriate;
 - The staff member against whom the complaint is made will be advised of the right to representation and given copies of all relevant documentation prior to and during the investigation process, i.e.
 - Complaint
 - Witness statements (if any)
 - The nominated person(s) will interview any witnesses and other relevant persons. Confidentiality will be maintained as far as practicable.
 - Persons may be required to attend further meetings to respond to new evidence or provide clarification on any of the issues raised.
 - The nominated person(s) will form preliminary conclusions based on the evidence gathered in the course of the investigation and invite any person adversely affected by these conclusions to provide additional information or challenge any aspect of the evidence.
 - On completion of the investigation, the nominated person(s) will form their final conclusions based on the balance of probabilities and submit a written report of its

findings and recommendations to the Chair of the Board.

- The staff member against whom the complaint is made will be given a copy of the investigation report and an opportunity to comment before any action is decided upon by the Chair of the Board.

8.5.2 If the complaint is upheld, the matter will be referred to the Chair of the Board who is empowered to take disciplinary action up to and including dismissal.

See appendix C - The standard of proof applicable to investigative and other proceeding in the employment context.

9.0 Informing Relatives/Guardians

Where appropriate *, the resident's immediate relatives or guardian should be notified by an appropriate member of management as soon as practicable and advised that an investigation into the allegation is being carried out. The identity of the staff against whom the allegation is made must **not** be disclosed at this stage. The relatives/guardian should also be assured that the resident has received appropriate support or treatment and that appropriate measures have been taken to ensure that no resident is at risk.

9.1 * Some residents may not wish to have the matter reported to their relatives/guardian.

Where appropriate residents will be offered the support of an advocate to act on their behalf if they wish.

10.0 Anonymous Allegations

Anonymous allegations on their own cannot lead to a formal investigation, as there is always the possibility that they are vexatious. Notwithstanding the fact that anonymous allegations cannot be the subject of a formal investigation unless there is supporting evidence, the designated officer will assure him/herself that the systems in place are robust and the welfare of service users is not at risk.

11.0 Reporting to Professional Bodies

Where a complaint has been fully investigated and evidence exists that professional misconduct may have taken place, the staff member should be reported to the body or bodies responsible for

professional regulation, e.g., the Medical Council (In the case of doctors) and An Bord Altranais (in the case of nurses) and other registration bodies when established.

12.0 Follow-on Action

12.1 Act of Mistreatment has occurred

- The resident who has been the victim of the act of mistreatment and, where appropriate, his/her family should be provided with information and/or assistance and counselling to ensure their full recovery from the trauma suffered as a result of the incident.
- Where the act of mistreatment is found to have occurred, this can have an adverse effect on staff morale. Assistance may be made available to staff members who have been affected by the allegation to help them to come to terms with what has happened and to restore a normal working environment.
- The staff member should be advised of what will happen next and his/her right to due process.
- A review of systems will be carried out to identify where deficiencies have occurred and an action plan is put in place to resolve these deficiencies.

12.2 Act of Mistreatment Has Not Occurred

- Where the complaint is not upheld, the Director of Services will ensure that the reputation and career prospects of the staff member concerned are not adversely affected by reason of the complaint having been brought against him/her. The staff member will be offered counselling and any other support necessary to restore his/her confidence and morale.
- The staff member who made the complaint will be reassured that management appreciates that the complaint was made in good faith.
- A review of systems will be carried out to identify where deficiencies have occurred and an action plan is put in place to resolve these deficiencies.

12.2.1 Malicious Complaints.

Where it is found that a report of an act of mistreatment was brought maliciously, the staff who made the complaint should be dealt with under the disciplinary procedure. In the event of a malicious family or third-party reporting, effort will be made to establish the rationale for

malicious or vexatious reports and actions will be considered to address underlying difficulties or challenges.

13.0 Informing an Garda Siochana

Even where the alleged act of mistreatment could potentially constitute a criminal offence, Peacehaven Trust will conduct an internal investigation into the allegation and take appropriate action in the context of the employer/staff relationship. The Garda must be informed where the alleged act of mistreatment could potentially constitute a criminal offence.

13.1 Where there are reasonable grounds to suspect that a criminal act has been committed, the matter must be reported immediately to the Gardaí, by the Designated Officer. Where the Gardaí are notified, Peacehaven Trust may conduct its own independent investigation in parallel (if permitted) with the criminal investigation, or on completion of the criminal investigation.

13.2 If the staff member refuses to co-operate with the internal investigation pending the outcome of criminal proceedings, this will not necessarily deter Peacehaven Trust from proceeding with its investigation. The staff member will be advised that if s/he is not prepared to co-operate with the internal investigation, Peacehaven Trust may have to form its conclusions on the basis of the information available and then proceed to take appropriate action (which could include dismissal) (See Appendix C).

13.3 It is noted that an allegation of an act of mistreatment against a staff member is an employment matter, which must be investigated by Peacehaven Trust itself. The standard of proof required in criminal proceedings ("beyond reasonable doubt") is higher than that required in investigations carried out by Peacehaven Trust in the context of the employer-staff member relationship. Peacehaven Trust must be satisfied "on the balance of probabilities" that the alleged act of mistreatment occurred but does not have to prove the case beyond all reasonable doubt. In other words, Peacehaven Trust must form a reasonable belief that the staff member committed the alleged act of mistreatment and take disciplinary action accordingly (See Appendix D).

Appendix A

Copy of Section 13.1 of HSE's "Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures:

Outcome of Preliminary Screening:

1.1 Local informal process.

If it is established that, for example, a single incident has occurred which is not of a serious nature, the manager may decide to deal with the matter locally and informally. This would usually include training. This approach must be agreed with the vulnerable person. This should be notified to the SPT(VP)

1.2 Inquiry – Internal or independent.

In establishing any form of Inquiry, relevant HSE policies must be considered. In considering the specific form of inquiry, issues to be considered include;

- The nature of the concerns
- If the matters relate to an identifiable person, or incident, or to system issues.
- The impact on confidence in the service.
- The views of the vulnerable persons and his/her family.

The service manager will usually commission the inquiry. The Commissioner of an Inquiry must develop specific Terms of Reference and, where appropriate, ensure the appointment of a Chair and members with the suitable experience and expertise, both in services for vulnerable persons and in the application of fair procedures. The Terms of Reference should be informed by appropriate professional advice. Arrangements for the provision of expert advice to the enquiry should also be outlined. An Inquiry Report will usually contain certain conclusions and recommendations and it is the responsibility of the Commissioner to receive the report and to determine the necessary actions.

1.3 Assessment and Management by SPT (VP) In certain circumstances, the HSE Head of Social Care in each CHO may decide that the matter should be assessed and managed by the SPT(VP). Such circumstance may include any possible/perceived conflict of interest for the Service Manager. The Head of Social Care in each CHO may also determine that another

process, appropriate to the particular issues arising, is required and may arrange such process. This may include the arranging of a comprehensive professional assessment.

1.4 Management of an Allegation of Abuse against a Staff Member In situations where the allegation of abuse arises in respect of a member of staff of the HSE or a Non-Statutory Organisation funded by the HSE, then the HSE Policies for Managing Allegations of Abuse against Staff Members will be followed. The safety of the service user is paramount, and all protective measures proportionate to the assessed risk must be taken to safeguard the welfare of the service user. Nothing should be done to compromise the statutory responsibilities of An Garda Síochána. If it is considered that a criminal act may have occurred, agreement on engagement with the person who is the subject of the complaint should be discussed in the first instance with An Garda Síochána.

Appendix B

Staff member's Right to silence?

Does a staff member who is the subject of investigative/disciplinary proceedings instigated by the employer have a right to silence in the context of such proceedings?

This question has been answered in the negative by Barrington J on behalf of the Supreme Court in his judgment in *Mooney v An Post* [1988] 4 IR 288. The plaintiff in the case, who was a postman, had been tried and acquitted on a criminal charge of interfering with the postal service. Thereafter, the employer attempted to conduct a disciplinary inquiry into the said complaints. However, the plaintiff refused to cooperate with the employer's efforts in this regard. The employer proceeded with the dismissal and the plaintiff subsequently challenged the employer's decision.

The Supreme Court, in holding against the plaintiff, distinguished between the position of a defendant in criminal proceedings and that of a person who is the subject of disciplinary or investigative proceedings being carried out by his employer. The latter proceedings are civil rather than criminal in nature. Furthermore, the Court argued, the right to silence applies only in the context of criminal proceedings but does not carry over to civil proceedings:

"It is important to emphasise that the dismissal proceedings were not Criminal proceedings and it was not sufficient for a person in the position of The plaintiff simply to fold his arms and say:-

"I'm not guilty. You prove it."

To attempt to introduce the procedures of a criminal trial into an essentially Civil proceeding serves only to create confusion."

Appendix C

The Defense of Qualified Privilege

The Common Law provides a defense, in particular circumstances, to individuals who make verbal or written statements of a kind which could expose their author to a claim of defamation if such statements were made in different circumstances. The defense exists in recognition of the fact that there are circumstances in which individuals have to be able to speak freely without fear of adverse legal consequences.

In general, the privilege covers situations where the maker of the statement has a duty to speak or is obliged to protect some interest. The duty in question does not have to be a strictly legal one: a moral or social duty to make the statement or report is sufficient. The recipient of the statement must have a corresponding duty to receive the statement. The defense only applies where the individual who makes the statement is not motivated by malice in making his statement.

In circumstances where an individual has a duty to speak and does so without malice, he can be assured that the defense of qualified privilege will protect him from any defamation claim to which his statement could possibly give rise. The defense will apply, for example, when a staff member reports to his line manager (or HR manager or some specially designated officer) his bona fide suspicion that any person may have committed an act of mistreatment.

Appendix D

The Standard of Proof Applicable to Investigative and Other Proceedings in the Employment Context

The plaintiff in Georgopoulos v Beaumont Hospital [1998] SIR 132 had been employed as a registrar in neurosurgery at Beaumont Hospital. Certain complaints were made against him arising out of the performance of his duties as a registrar. An investigation was conducted into those allegations and the plaintiff subsequently sought to challenge the decision arrived at by the investigators on the basis, inter alia, that the investigators had failed to substantiate the complaints against him 'beyond a reasonable doubt.'

Addressing the issue of the correct standard of proof to be applied by those charged with conducting such an investigation, the Supreme Court, per Hamilton CJ, held as follows:

"The proceedings before the defendant were in the nature of civil proceedings and did not involve any allegations of criminal offences. The standard of proving a case beyond reasonable doubt is confined to criminal trials and has no application in proceedings of a civil nature. It is true that the complaints against the plaintiff involved charges of great seriousness and with serious implications for the plaintiff's reputation. This does not, however, require that the facts upon which the allegations are based should be established beyond all reasonable doubt. They can be dealt with on "the balance of probabilities" bearing in mind that the degree of probability required should always be proportionate to the nature and gravity of the issue to be investigated. I am satisfied that in inquiries, such as conducted in this case, the standard of proof to be applied is not the standard of proof required in a criminal case but is that applicable to all proceedings of a civil nature, namely, "the balance of probabilities"-a standard which takes into account the nature and gravity of the issue to be investigated and decided."