

Protection of Vulnerable Adults (POVA) Procedure



Contents

| | Page |
|-------------------------------------------------------|------|
| Introduction..... | 3 |
| Scope..... | 3 |
| When POVA checks should be made..... | 4 |
| Key Definitions..... | 4 |
| Role of Council..... | 6 |
| Checks against the POVA list..... | 7 |
| Making checks against the POVA list..... | 7 |
| Referring Persons for Inclusion on the POVA list..... | 8 |
| Information to be included with a referral..... | 9 |
| Appeals..... | 10 |
| Further Information..... | 10 |

1. Introduction

- 1.1 Protection of Vulnerable Adults (POVA) procedure aims to ensure compliance with the Care Standards Act 2000 and consistently across all Directorates. The Council's Adult Protection Co-ordinator is responsible for ensuring the Council complies with its legislative duties and, in conjunction with Human Resources, providing advice on individual POVA cases.
- 1.2 Those workers who have harmed vulnerable adults in their care will no longer be able to work with vulnerable adults. This procedure will add further protection to the pre-employment process, including Criminal Records Bureau (CRB) checks, which already take place and stop known abusers from entering the social care workforce.
- 1.3 The POVA list is held by the Secretary of State. Through referrals to and checks against the list, care workers who have harmed a vulnerable adult, or placed a vulnerable adult at risk of harm, (whether or not in the course of their employment) will be banned from working in a care position with vulnerable adults.

2. Scope

- 2.1 The POVA procedure refers to care of vulnerable adults aged 18 years or over and is currently implemented with regard to:
 - Care workers employed by registered providers of care homes (including workers supplied by employment agencies and businesses to such providers) who are employed in care positions that enable them to have regular contact in the course of their duties with care home service users.
 - Care workers employed by registered providers of domiciliary care agencies (including workers supplied by employment agencies and businesses to such providers) who are employed in care positions concerned with the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
 - Adult placement carers. Although all such carers were not covered when POVA Scheme was first introduced (on 26 July 2004) the Government extended to adult placement schemes from 31 August 2004.
- 2.2 Phased implementation means that, until further notice, the POVA scheme will not apply to care workers outside the scope of 2.1 above. This means that those who work with vulnerable adults in NHS or independent hospitals, clinics and other facilities, or through an independent medical agency, are excluded from the

scope of POVA for the time being. This should not prevent the reporting of such persons should concerns arise.

3. When POVA checks should be made

- 3.1 The Care Standards Act requires providers of Care to check the POVA list prior to the appointment of the care worker to the care position. Employment in a care position must not be offered to an individual who is on the POVA list. There is no discretion. External providers should have in their contract's inclusion that volunteer's, students and agency workers are CRB/POVA checked.
- 3.2 POVA checks must be carried out where an individual:
- Applies for a care position;
 - Or moves, or is transferred, from a non-care position to a care position.
- 3.3 Unlike the Protection of Children Act (POCA), POVA is not 'permissive'. It does not permit checks against the POVA list being made on persons other than care workers or prospective care workers. However, if it comes to the Council's attention that a social worker has been abusive in a 'care worker' capacity following an investigation, then the Co-ordinator will ask for them to be included. Otherwise, the Council depends on the CRB disclosure.
- 3.4 Where the Council discovers that an individual already occupying a care position is included in the POVA list, either as a confirmed inclusion or a provisional inclusion, they must cease to employ them in a care position. Advice should be sought from the Adult Protection Co-ordinator and Human Resources to either try and move the individual to a non-care position or consider dismissal depending upon the case.
- 3.5 The Council also checks employees who need to be CRB checked to do their job every three years.

4. Key Definitions

- 4.1 The Care Standards Act contains definitions that are relevant to this procedure. You are advised to become familiar with the Act and understand the implications of the Department of Health guidance when dealing with cases. Some key definitions are:

4.2 Providers of Care

The term 'providers of care' is used to refer to both registered persons who manage or work in care homes (e.g. homes that provide nursing care) and registered persons who manage and run domiciliary care agencies. The Council is a provider of care.

4.3 Employment

Employment is defined as any employment, whether paid or unpaid and whether under a contract of service or apprenticeship.

4.4 Care Worker

- An individual who is or has been employed in a position which enables them to have regular contact in the course of their duties with adults to whom accommodation is provided in a care home;
- An individual concerned with the provision of personal care in their own homes for a person who by reason of illness, infirmity or disability is unable to provide it for themselves without assistance.

4.5 Vulnerable adult

An adult to whom accommodation and nursing or personal care are provided in a care home; or an adult to whom personal care is provided in their own home under arrangements made by a domiciliary care agency.

4.6 Harm

The ill treatment or the impairment of health or development of a vulnerable adult.

4.7 Regular contact

Contact that has a constant or definite pattern, or which recurs at short uniform intervals or on several occasions during short periods of time such as a week.

4.8 Personal Care

As set out in the Domiciliary Care National Minimum Standards, the established, ordinary meaning of personal care includes four main types of care, which are:

- Assistance with bodily functions such as feeding, bathing and toileting;
- Care which falls just short of assistance with bodily functions, but still involving physical and intimate touching, including activities such as helping a person get out of a bath and helping them get dressed;
- Non-physical care, such as advice, encouragement and supervision relating to the foregoing, such as prompting a person to take a bath and supervising them during this;
- Emotional and psychological support, including the promotion of social functioning, behaviour management, and assistance with cognitive functions.

- 4.9 It is the Council's view, as reflected in the guidance it has issued, that only the types of personal care set out in the first two bullet points above will give rise to registration as a domiciliary care agency under the Care Standards Act 2000. However, it is, of course, up to the National Care Standards Commission to decide (taking into account the facts of a particular case and the laws) whether or not an undertaking can be registered as a domiciliary care agency, and if in doubt you should refer to them. Please refer to the Guidance – Supported Housing and Care Homes – Guidance on Regulation, which can be found on their webpage at <http://www.doh.gov.uk/scg/shchguidance.htm> where necessary.

5. Role of the Council

- 5.1 The Council has statutory duties to deliver Social Services and is a registered provider of care homes and domiciliary care agencies. It takes a leading role in local implementation of good practice guidance from the Government aimed at preventing and tackling abuse of vulnerable adults. Three policies in particular provide the basic principles for local approaches to adult abuse:
- “In Safe Hands” published by the National Assembly for Wales and the Home Office in July 2000.
 - “No Secrets” guidance published by the Department of Health and Home Office in November 2000
 - LBTH Adult Protection Procedure and Procedures, published by LBTH in July 2004
- 5.2 The Council must ensure that providers of care who are independent of them, particularly those from whom the Council commission services, employment agencies and businesses who supply care workers, are made aware of good practice guidance, policies and procedures.
- 5.3 The Council must continue to:
- Reinforce the importance of good recruitment and selection practice and the importance of pre-employment checks when they contract for services from independent providers of care.
 - Review and strengthen the work of Adult Protection Committees to review and help raise levels of awareness about abuse and what to do if abuse is experienced or observed, among service users and the general public.
 - Implement robust checking procedures and monitor their effectiveness.

6. Checks against the POVA List

- 6.1 There is a legal requirement on providers of care to check if a job applicant is included on the POVA list if they are about to offer an individual employment in a care position. This includes individuals supplied by employment agencies and businesses.
- 6.2 In relation to registered domiciliary care services, anyone who is employed in a care position concerned with the provision of personal care in their own homes for persons who, by reason of illness, infirmity or disability, are unable to provide it for themselves without assistance, will need to be checked against the POVA list prior to the commencement of their employment in such a position.
- 6.3 Where staff are being supplied by an employment agency or business, the legal duty to check the POVA list still rests with the provider of care. However, in these circumstances the provider of care may instead obtain written confirmation from the agency or business supplying the member of staff, that the agency or business has checked that the individual is not on the POVA list within the last 12 months.
- 6.4 Where an individual is registered with more than one agency/business, it should be noted that a POVA check carried out by one agency/business is not transferable in relation to a supply of the worker by another agency/business. This means the POVA check must have been carried out by the agency/business supplying the worker if the provider of care is to be able to rely on that check. Interim and agency staff engaged through the Comensura contract follow this practice and mandate to all agencies that CRB checks (which includes POVA) are not portable to agency to agency. This was effective from 1st April, 2006 under the guideline of the CRB.

7. Making checks against the POVA list

- 7.1 Checks against the POVA list can only be made via the Criminal Record Bureau as part of a Disclosure under the Police Act 1997. The check is requested by crossing the appropriate 'POVA' box on the CRB Disclosure Application Form.
- 7.2 A CRB Disclosure is a document containing information held by the police and Government departments. It is used to make safer recruitment decisions. There are currently two types of disclosure, standard and enhanced, and a POVA check is available with either. The Council requires enhanced CRB checks on all care workers.
- 7.3 Following a receipt of a disclosure application requesting a POVA check for a person seeking a care position, if the CRB discovers that the person is included on the POVA list (other than provisionally), the CRB will advise the care provider that the person may not be employed in a care position. The CRB will also inform the Police that an offence may have been committed.

- 7.4 Where a person is provisionally included on the POVA list, the care provider will again be informed that the person may not be employed, but the Police will not be informed since it is not a criminal offence to seek work in a care position while provisionally listed on the POVA list.
- 7.5 The CRB has launched a POVAFirst service which will allow the result of the POVA check before the full Disclosure is received. These are available only in very exceptional circumstances in which a person may be allowed to start work for a care home or domiciliary care agency before a CRB Disclosure has been issued. Such cases are permissible only where it is necessary to take such action because of a real danger that staffing levels will otherwise fall below numbers required to meet statutory obligations. In addition the Council must put in place stringent arrangements for the training and supervision of the employee in the interim.
- 7.6 For POVAFirst, the Council must first submit a Disclosure application form and then send in an email to the CRB requesting a POVAFirst check. On receipt of the Disclosure application form, the CRB will respond with the results within 72 hours excluding weekends and bank holidays.
- 7.7 The POVAFirst service is an optional service provided by the CRB and should only be used when staffing levels dictate immediate clearance within two to three days to ensure adequate staffing levels. The Commission for Social Care Inspection and Care Standards Inspectorate for Wales will take action against providers who misuse it. Use of this service must be approved by the relevant Service Head.

8. Referring Persons for Inclusion on the POVA list

- 8.1 All adult protection referrals must be registered with the Council's Adult Protection Co-ordinator who has a legal duty, on behalf of the Council, to make any referral to the Secretary of State.
- 8.2 Prior to any referral for POVA registration, there will need to have been an investigation. Following an investigation if, in the view of the investigating officer, the individual has been found guilty of misconduct which harmed or placed at risk of harm a vulnerable adult, they will need to be referred by the Co-ordinator.
- 8.3 The circumstances in which the Council must refer a care worker to the Secretary of State for possible inclusion on the POVA list are as follows:
- Dismissal on the grounds of misconduct (whether the act or offence occurred away from the workplace) which harmed or placed at risk of harm a vulnerable adult.

- The worker has resigned, retired or been made redundant in circumstances such that the provider would have dismissed them, or would have been considered dismissing on such grounds if they had not resigned, retired or been made redundant.
- The provider has, on such grounds, transferred the worker to a position which is not a care position; or
- The provider has, on such grounds, suspended the worker or provisionally transferred them to a position which is not a care position but has not yet decided whether to dismiss them or to confirm the transfer.

This also includes former employees if information becomes available which, in the opinion of the provider, would have resulted in any of the above circumstances.

- 8.4 The first 100 POVA referrals to the Secretary of State by all employers involved more than one type of abuse or harm. The most common reasons were neglect, physical harm, financial misconduct, and verbal abuse. Other reasons included failure to prevent abuse, threatening behaviour and working under the influence of drugs or alcohol. The Adult Protection Co-ordinator will determine whether any allegation falls under the POVA procedure.

8.5 Suspensions

The act makes it clear that individuals who have been suspended on the grounds of harm they have caused to vulnerable adults, should be referred to the POVA list, even before decisions are made to dismiss or permanently transfer to a non-care position. Before a care worker is suspended, the Adult Protection Co-ordinator will take all reasonable steps to establish, as quickly as possible, that the allegations of harm have some element of substance.

- 8.6 If the care worker is immediately suspended because the allegations of harm are particularly serious, a referral to the POVA list will be made if the Adult Protection Co-ordinator is reasonably satisfied that the allegations have some substance. In the event the allegations are groundless, the person's name can be removed from the list.

9. Information to be included with a referral

- 9.1 The Adult Protection Co-ordinator will complete the referral form. The minimum information that the Secretary of State will require for all referrals is as follows:
- Full name and date of birth
 - National Insurance number
 - Last known address

- Confirmation that the individual occupied a care position at the time of the misconduct
- Full details of the alleged misconduct
- Detailed explanation about how, by misconduct, the individual harmed or placed at risk of harm a vulnerable adult
- Details of any investigation carried out to date and their conclusions including copies of any relevant papers (statements, interview notes, disciplinary hearings) and details of the providers disciplinary procedures
- Details of the action taken against the individual, for example, suspension, dismissal or transferred from a care position or other action taken
- Information on any police involvement (or the involvement of any other agency)
- Details of further action being considered or planned for example dates for disciplinary hearings, timetable on further investigations, and so on
- Any other information considered relevant to the circumstances of the alleged misconduct

9.2 In addition to the above information, a referral to the POVA list from a provider of care should be accompanied by a copy of either:

- Their registration certificate issued by the Commission for Social Care Inspection or the Care Standards Inspectorate for Wales or;
- The standard letter from the Commission or Inspectorate saying that the provider's application for registration has been received and is being processed

9.3 All referrals are to be sent in hard copy and clearly marked confidential to:

The Manager
 Protection of Vulnerable Adults List
 Department for Education and Skills
 Ground Floor, Area E
 Mowden Hall, Staindrop Road
 Darlington DL3 9BG

10. Appeals

10.1 An individual who is confirmed on the POVA list or referred to it, can seek to get their name removed by firstly appealing to the Secretary of State. Should the Secretary of State decide not to remove them, they can appeal to the Care Standards Tribunal. Decisions made by the Tribunal are legally binding and final.

11. Further Information

11.1 If you have any queries regarding this procedure, please contact your Human Resources Manager or the Adult Protection Co-ordinator.

11.2 Further guidance can also be obtained from the Department of Health on 0207 210 4850 or on their website at www.dh.gov.uk. The Social Care Institute for

Excellence (SCIE) has produced a practical guide for making referrals to the POVA list which can be obtained from their website at www.scie.org.uk.

Human Resources Strategy

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